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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 10

OCEAN BEACH HEIGHTS, INC., NORMANDY BEACH DEVELOPMENT COMPANY, ET AL., PETITIONERS,

vs.

THE BROWN-CRUMMER INVESTMENT COMPANY, TOWN OF NORTH MIAMI, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 6, 1937.

CERTIORARI GRANTED APRIL 12, 1937.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

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the 1st day of December, A. D. 1934, Bill of aint was filed, in the words and figures follow--wit:

BILL OF COMPLAINT.

HE UNITED STATES DISTRICT COURT, N AND FOR THE SOUTHERN DISTRICT F FLORIDA.

BROWN CRUMMER INVESTMENT COM-ANY, a corporation organized and existing under d by virtue of the Laws of the State of Kansas,
Complainant,
versus
1248-M-Eq.

N OF NORTH MIAMI, formerly Town of IIAMI SHORES, a municipal corporation, als.,
Defendants.

ne Honorable Judge of the United States District ourt for the Southern District of Florida, in hancery Sitting:

es now The Brown Crummer Investment Com-a corporation organized and existing under and ue of the laws of the State of Kansas, and for nd all other bondholders brings this its Bill of aint against the Town of North Miami, formerly Shores, a municipal corporation, as a class; t said Town of North Miami, formerly Miami , the North Island Investment Company, a cor-on, D. Richard Mead, as Trustee in Bankruptcy ian Creek Holding Company, a corporation, the andy Beach Development Company, a corpora-Lucille F. Ensign and her husband, Walter C. , Ocean Beach Heights, Inc., a corporation, Realty Company, a corporation, Tatum's Ocean

Park Company, a corporation, Indian Creek Club, a corporation, (formerly Indian Creek Golf Club, a corporation), E. B. Leatherman, Clerk of the Circuit Court of Dade County, Dana W. Robbins, Mayor of said town of North Miami, J. H. Gribble, Tax Collector and Tax Assessor of the town of North Miami; Mrs. E. May Avil, Clerk and Treasurer of the town of North Miami; E. C. Harner, Mrs. Cecille Sevier, Mrs. Ella F. Klefeker, D. D. Avil and H. W. Jones, as members of and constituting the Town Council of the town of North Miami, and against all other individuals, firms and corporations, owners and holders or persons interested in property, real or personal, so-called, within the boundaries of said town, and particularly within that portion of said town hereinafter described in Paragraph IX, as a class, and shows unto this Honorable Court:

I.

That the complainant is a citizen of the State of Kansas, and the amount in controversy in this suit exceeds the sum of Three Thousand Dollars, exclusive of interest and costs.

II.

The town of Miami Shores, now the Town of North Miami, is a municipal corporation organized in 1926, and is now existing under and by virtue of Sections 1825 to 1828 inclusive, of the Revised General Statutes of Florida of 1920. The name of said town as originally incorporated was changed to the Town of North Miami by virtue of a special act of the legislature of the State of Florida, passed at its Extraordinary Session of 1931, being Chapter *15823*. That after its organization as above alleged, the said town assumed and exercised all of the functions and powers granted to it under and by virtue of the laws above quoted, includ-

ing the exercise of police powers, supervision of health, providing for the collection of garbage, elimination of mosquitoes, etc., both in the territory east of Bay Biscayne and the territory west of Bay Biscayne hereinafter described.

III.

The North Island Investment Company is a corporation organized and existing under the laws of the State of Florida and is a citizen and resident of the State of Florida; D. Richard Mead, as Trustee in Bankruptcy of Indian Creek Holding Company, a corporation, is a resident and citizen of Dade
3 County, Florida; The Normandy Beach Development Company is a corporation and resident of the State of Ohio; Lucille F. Ensign and her husband, Walter C. Ensign, are residents and citizens of the State of Florida, County of Dade; Ocean Beach Heights, Inc., is a corporation organized and existing under the laws of the State of Florida and is a citizen and resident of the State of Florida; Home Mortgage Company is a corporation organized and existing under the laws of the State of Michigan and is a citizen and resident of the State of Michigan; Surf Hotel Corporation is a corporation organized and existing under the laws of the State of Florida and is a citizen and resident of the State of Florida; Creek Realty Company is a corporation organized and existing under the laws of the State of Florida and is a citizen and resident of the State of Florida; Tatum's Ocean Park Company is a corporation organized and existing under the laws of the State of Florida and is a citizen and resident of the State of Florida; Indian Creek Club (formerly Indian Creek Golf Club, a corporation) is a corporation organized and existing under the laws of the State of Florida and is a citizen and resident of the State of Florida; Dana W. Robbins is the duly qualified and acting Mayor of the Town of North

Miami and is a citizen and resident of the State of Florida; E. B. Leatherman is the duly qualified and acting Clerk of the Circuit Court of Dade County, Florida, and is a citizen and resident of Dade County, Florida; J. H. Gribble is the duly qualified and acting Tax Collector and Tax Assessor of the town of North Miami and is a citizen and resident of Dade County, Florida; Mrs. E. May Avil, is the duly qualified and acting Clerk and treasurer of the Town of North Miami, and is a citizen and resident of Dade County, Florida; and E. C. Harner, Mrs. Cecille Sevier, Mrs. Ella F. Klefeker, D. D. Avil and H. W. Jones are the duly qualified and acting members of the Town Council of the Town of North Miami and are citizens and residents of Dade County, Florida.

4 IV.

On to-wit, the 8th day of September, A. D. 1930, the Brown-Crummer Investment Company, complainant herein, instituted a suit in the above Court upon certain past due obligations of the town of Miami Shores, now the Town of North Miami, said obligations being past due bonds and coupons of the issues dated and described as follows:

1. Town of Miami Shores, Sidewalk Improvement Bonds dated March 1, 1928, 6%, said bonds being validated by decree of the Circuit Court of the 11th Judicial Circuit in and for Dade County, Fla., rendered May 7th, 1928.

2. Town of Miami Shores, Street Improvement, dated March 1, 1928, 6%, said bonds being validated by decree of the Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida, rendered May 7, 1928.

3. Sidewalk Improvement Bonds, dated April 1, 1927, 6%, said bonds being validated by decree of the Circuit Court of the 11th Judicial Circuit of Florida, in and for Dade County, Fla., rendered April 12, 1927.

4. General Improvement Bonds, dated January 1, 1927, 6%, which said bonds were validated by decree of the Circuit Court of the 11th Judicial Circuit of Florida, in and for Dade County, Fla., rendered .....

being case numbered 1571 on the law side of the Court; and final judgment was rendered in said action on the 19th day of June, A. D. 1931, in the sum of $11,790.00, together with costs in said suit taxed at $12.50, said judgment being recorded in Judgment Book No. 1, page 495. The time for appeal from said judgment has long since expired and no part of the same has been paid.

Complainant is also the owner and holder of many other bonds from which said coupons included in the judgment were clipped and also of other coupons which have matured since the maturity of these included in the judgment, all of which are past due and unpaid.

5 The said Town of North Miami has no property subject to execution and no means of raising funds to pay the judgment of your complainant other than by the exercise of the power of taxation. Such power was conferred by Section 1903 of the Revised General Statutes of 1920, which declare:

"It is hereby made the duty of the City Council to assess and collect such taxes from the citizens and upon the property in the city as shall be necessary for the payment of said bonds; provided, however, that all property shall be taxed upon the principle established by state taxation."

V.

By the terms of said bonds and by the statute authorizing the issuance of same, said Town of Miami Shores, now North Miami, pledged its full faith and credit for the same and further pledged itself to levy a tax upon all the taxable property in said City for the payment of the same so that the sole security for the payment of the said bonds was the power vested in the Town of Miami Shores, now North Miami, to levy such taxes upon all the said taxable property within the said City limits at the time of the issuance of said bonds of the Town of Miami Shores, now North Miami.

By virtue of the terms of said Statute it became, therefore, was and is the duty of said Town Council of the Town of North Miami, formerly Miami Shores, to levy a sufficient tax and assessment upon all real and personal property within the town as it was defined at that time by the then existing provisions of law and proceedings taken under the same for the payment of its said bonds and coupons.

VI.

The proceeds derived from the said sale of the bonds above described were expended by the said Town of Miami Shores, now North Miami, in the construction of Public Improvements which became a part of the permanent assets of the said Town of Miami Shores, now North Miami, which assets are exempt from levy and sale and the benefits of said improvements
6 are available to the defendants and each and all of the same and to all other inhabitants of the said Town of Miami Shores, now North Miami, and to the public generally, and a portion of the proceeds of said bonds were expended on improvements within the boundaries of the property described in the writ of quo warranto hereinafter referred to.

VII.

That at the time of the organization of said town, as above set forth, none of the defendants herein nor any other property owners of said town made any objection to the inclusion of their property within the limits of the said town of North Miami, formerly Miami Shores, but on the contrary many of the taxpayers and property owners whose properties were within the boundaries of said town, including some of the defendants herein named, affimatively consented to the same. Some of them advertised in the newspaper the fact that their property had been included in said boundaries, and full publicity was given to the fact that said town had been duly incorporated. Nor did the defendants or any other property owners of said town file any objections to the incorporation of said properties within the town, nor institute any legal proceedings to prevent the incorporation of their property within said town or to have the same excluded, until the institution of the quo warranto proceedings on August 12, 1929, as hereinafter set forth. After the bonds had been authorized by the city officials of said town, a proceeding was filed in the Circuit Court of Dade County for the validation of said bonds, and after proceeding in accordance with the statutes in such cases made and provided, a final decree was made and entered by the Circuit Court of Dade County, in accordance with the requirements of said statute. At the time of said validation no objections were made thereto nor were proceedings filed to restrain the issuance of said bonds or to attack the validity of same, although said proceedings gave full notice that the town of Miami Shores, by the terms of said bonds, intended to pledge its full faith and credit for the payment of the same. No appeal was ever taken from the decree of validation, nor did the defendant or any other taxpayer object to the sale of said bonds or to the expenditure of the pro-

ceeds derived from the sale for the construction of public improvements within said town.

VIII.

That on, to-wit, the 12th day of August, A. D. 1929, there was filed in the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, a writ of quo warranto on behalf of the State of Florida, ex rel Fred H. Davis, Attorney General, and North Island Investment Company, a corporation; Indian Creek Golf Club, a corporation; The Normandy Beach Development Company, a corporation, Lucille F. Ensign, joined by her husband, Walter C. Ensign, against the Town of North Miami, commanding the officials and each of them, to show by what authority they claimed to exercise their offices respectively over certain territory located within the boundaries of said Town as originally organized. The property described in the information upon which said writ was issued is located east of Biscayne Bay, and particularly described as follows:

"Commencing for a point of beginning at the intersection of the high water mark of the Atlantic Ocean with the south boundary line of fractional Section 35 in Township 52 South, Range 42 East, Dade County, Florida, run West along the south boundary line of Section 35 and continue along the south line of sections 33 and 34 to the intersection of the eastern boundary of the City of Miami; thence north northeasterly along the said eastern limits of the City of Miami produced a distance of 2750 feet; thence in a northeasterly direction to the northeast corner of fractional Section 27, Township 52 South, Range 42 East; thence continue in a northeasterly direction deflecting to the left from the last mentioned course to
8 the northeast corner of the southwest one-quarter (SW¼) of the southwest one-quarter (SW¼) of a fractional section 23-52-42;

thence north along the east line of the west one-half (W½) of the west one-half (W½) of fractional Section 23-52-42 the north boundary of said Section 23; thence east along the said north boundary line of said Section 23 to the intersection of the highwater mark of the Atlantic Ocean; thence continue east along the last mentioned course produced a distance of 1500 feet; thence in a southerly direction parallel to and 1500 feet east of the highwater meander line of the Atlantic Ocean to the south line of fractional Section 35, Township 52 South, Range 42 East, produced easterly; thence west along the last said south line of Section 35 to a point of beginning,"

which said lands include properties owned by all the individual defendants herein and were included within the corporate limits of said Town of Miami Shores, now North Miami, when the bonds described herein and upon which judgment was obtained were issued.

Neither complainant nor any other holder of bonds or coupons were made parties to said suit, nor intervened therein.

Final judgment was entered in said cause by the Judge of the Circuit Court in and by the terms of which the defendants L. H. Harrington, as Mayor, Louis Nathan, H. Goodrich, John A. Mahood, William Bennett, Jack Bettles, John V. Shellhorse, as members of and constituting the Town Council, H. H. Hawthorne, as City Clerk, and Tax Assessor, and C. A. McDonald as Town Marshal and Acting Tax Collector, were ordered ousted, excluded and prohibited from exercising the offices, franchises and privileges of a municipality and of the Mayor, Councilmen, Tax Collector and Town Marshal under the purported license and charter of the municipality of the Town of Miami Shores.

Upon appeal to the Supreme Court of Florida said judgment of ouster was reversed on the 24th day of March, A. D. 1931 and remanded to the Circuit Court with directions that further proceedings be had in said cause not inconsistent with the opinion of said Court. Said cause was again tried in the Circuit Court and a final judgment of ouster was entered; from said judgment of ouster the town of North Miami appealed but said appeal was dismissed, and said judgment has now become final.

IX.

On March 25th, 1931, the Normandy Beach Development Company filed a suit in the Circuit Court of Dade County against E. B. Leatherman, as Clerk of the Circuit Court of Dade County, to cancel certain tax certificates issued by the town of Miami Shores against their property, and to enjoin the issuance of a tax deed on valuable property claimed to be owned by the Normandy Beach Development Company. A temporary injunction was granted without notice, and is still in force and effect. On October 20th, 1932, Biscayne Park Estates, a Florida corporation, filed a suit against Washington Owners, Inc., a Florida corporation, and E. B. Leatherman, as Clerk of the Circuit Court, and the town of North Miami, to enjoin the issuance of tax deeds against certain property west of Biscayne Bay charging that the incorporation of said town was illegal, the assessments were illegal and the tax sales were illegal, and a temporary injunction without notice was also granted against the Clerk of the Circuit Court. A quo warranto suit has also been brought, entitled "State of Florida, ex rel Cary D. Landis, Attorney General, and Harvey B. Graves and Annie M. Johnson, co-relators, against the Town of North Miami, formerly known as Miami Shores," said suit being filed June 9th, 1932, to exclude one thousand thirty (1030) acres of land comprising the northern

portion of the lands within the town of North Miami, formerly Miami Shores, lying west of Biscayne Bay. Neither complainant nor any other bondholder was made a party to these suits.

In addition to the foregoing a suit in chancery was also filed against E. B. Leatherman as Clerk of the Town of North Miami on behalf of S. M. Tatum, Inc., in which P. D. Cockrell joined as an intervener and as the holder of a tax certificate involved in said suit, and Ocean Beach Heights, Inc., a Florida corporation, a property owner in said town, became a party by intervention, the purpose of said suit being to enjoin the issuance of tax deeds based upon tax certificates which had been issued by the town of North Miami against certain property located east of the bay, for the non-payment of taxes levied by said town. In this latter suit an injunction was issued and final decree entered declaring the tax certificates void and enjoining the issuance of deeds upon the same. Upon appeal to the Supreme Court of Florida a decision was rendered on March 21, 1934, by the Supreme Court of Florida affirming the decree of the Circuit Court, and rehearing has been denied. Neither complainant nor any other holder of bonds or coupons issued by said town were parties to said suit, though its rights and the pendency of this suit and the appeal from the order issuing the peremptory writ were well known to the parties thereto, nor did complainant even know of the pendency of said suit until after the decision of the Supreme Court of Florida.

X.

The total assessed valuation of all property within the former corporate limits of the Town of Miami Shores, now North Miami, as of April 1st, 1931, was $4,803,142.00, and the assessed valuation of the prop-

erty excluded from the Town limits by the decree of the State Court in the case of State v. Mahood as of April 1, 1931, was $3,390,558.00, so that the total assessed valuation of the property excluded consisted of approximately 63% of the total assessed valuation of the property on the City Tax books as of April 1st, 1931.

That for the year 1932, the properties within the boundaries of said town were valued on the tax roll at $2,748,151.00. The portion of the property described in the decree of ouster above set forth was valued at $1,843,360.00 and the property in the other portion of said town was valued at $902,801.00.

That for the year 1933 the total valuation upon all properties within the boundaries of said town as originally described amounted to $2,714,-
11 566.00, the property east of the Bay being assessed at $1,839,480.00 and the property west of the Bay at $875,086.00, the property east of the Bay being the property hereinabove described in paragraph VI, as described in the writ of quo warranto there referred to.

XII.

The total bonded debt of the town of North Miami, formerly Miami Shores, which was incurred and is still outstanding, amounts to $238,000.00. The town has defaulted in the payment of a large portion of the principal and interest of the same, the dates, descriptions and amounts of said issues, and the defaults in payment as of June 1, 1934, being as follows:

	Outstanding	Past Due	Past Due Int.
Street Improvement Issue of May 1, 1927	$12,000.00	$6,000.00	$2,760.00

Sidewalk Improvement Issue of April 1, 1927	43,000.00	22,000.00	8,260.00
Sidewalk Improvement Issue of March 1, 1928	7,000.00	4,000.00	1,215.00
Sidewalk Refunding Issue of April 1, 1928	3,000.00	2,000.00	550.00
Street Improvement Issue of March 1, 1928	4,000.00	4,000.00	615.00
General Improvement Issue of Jan. 1, 1927	169,000.00	50,000.00	36,745.00
	238,000.00	88,000.00	50,145.00

and additional interest and principal will continue to mature and go unpaid.

After the entry of the judgment against said town, complainant applied to this Court on the 7th day of October, 1930, and obtained an alternative writ of mandamus against the Town of North Miami, formerly Miami Shores, to compel it to levy a tax for the payment of the judgment theretofore obtained by it. Petitions of intervention were thereafter filed by the defendant, The Normandy Beach Development Company, a corporation, North Island Investment Company, a corporation, Tatum's Ocean Park
12 Company, a corporation, Ocean Beach Heights, Inc., a corporation, Surf Hotel Corporation, a corporation, D. Richard Mead, as Trustee in Bankruptcy of Indian Creek Holding Company, a corporation, Creek Realty Company, a corporation, Home Mortgage Company, a corporation, Lucille F. Ensign and her husband Walter C. Ensign, Indian Creek Club,

a corporation (formerly Indian Creek Golf Club, a corporation) and said defendants were permitted to become parties defendant in said mandamus proceeding, and to file answers or defenses to the issuance of the peremptory writ.

Testimony was taken upon the answers filed by the interveners and all of the questions of fact and law raised in the proceedings in the State Court in the case of State ex rel v. Mahood, et al., were again asserted to the issuance of the peremptory writ of mandamus, On the 24th day of January, 1933, after final hearing, peremptory writ of mandamus was issued. Thereafter said interveners, the Normandy Beach Development Company, an Ohio corporation, Home Mortgage Company, a Michigan corporation, Ocean Beach Heights, Inc., Tatum's Ocean Park Company, Surf Hotel Corporation, all Florida corporations, and Lucille F. Ensign, joined by her husband Walter C. Ensign, prepared and filed a petition for the allowance of an appeal and after causing themselves to be severed from the town of North Miami, formerly Miami Shores, and its officials who did not appeal, prosecuted an appeal to the Circuit Court of Appeals of the Fifth Judicial Circuit, which appeal coming on to be heard before that Court was dismissed by order dated February 15, 1934. At the same time the Circuit Court of Appeals rendered an opinion holding that said interveners were not proper parties to the writ and were not entitled to defend the action, but declined to pass upon the legal issues attempted to be raised therein.

XIII.

The Town of North Miami, in response to the peremptory writ, prepared its budget for the year 1932 and included in said budget a levy of 19 mills
13 against the property east of the Bay Biscayne which was sought to be excluded by State

Court decree in the Mahood case, said levy being made to pay the proportionate part of the bonded debt and expenses of collecting the same, but no levy has been made against the said properties to pay for any expenses of the Town except those necessary in the levy and collection of taxes to pay its Bonded debt.

That for the year 1933 the town included a levy in its budget of 16 mills against the property East of the Bay, same being made to pay a portion of the debt and the interest accruing thereon and the expense of collecting the same, and said officials of the town of North Miami are ready and willing to continue to levy and collect taxes against said property to pay the principal and interest of the judgment of the complainant and of the bonds and coupons held by the complainant and other bondholders as well. But because of the judgment of ouster which has been entered against said officials as hereinabove set forth, said officials are fearful that they may be held for contempt of the decree of the State Court if they attempt to enforce the collection of such taxes. If a suit be brought to enforce such collection the decree of ouster would be a complete defense to any action brought by the town on the ground that the same is res adjudicata against it of its right to collect taxes from the lands east of the Bay. This injunction already obtained in the State Court by some of the defendants restraining the issuance of tax deeds based upon tax certificates and declaring the taxes already pledged by the town against property east of the Bay to be void has also interfered with and prevented the town from enforcing the collection of taxes heretofore levied by it. If said defendants and owners of property within the boundaries described in paragraph VIII be permitted to utilize the decree of ouster and the injunctions heretofore obtained in the State Courts and above described to prevent the further levy and collection of taxes by the Town of North Miami, for the payment of the judgment and of the coupons

and bonds held by the complainant and other parties it would be impossible for the complainant
14 and other bondholders to realize sufficient sums out of the remaining properties within the boundaries of the town of North Miami, formerly Miami Shores, to pay the obligations owing to them. Complainant is further informed and believes that the taxpayers and property owners east of the Bay have been demanding and are continuing to demand of the Clerk of the Circuit Court that he cancel and deliver to them all tax certificates held by him against said property on the ground that the same are void under the decision of the Supreme Court of Florida in Alta Cliff Co. vs. Leatherman, et al., and are threatening to bring action against him to compel him to cancel the same. By reason of which fact complainant alleges that it and the other holders of bonds and coupons of the town of North Miami are without remedy at law to protect and enforce the rights given to them by the statutes of the State of Florida and by the terms of the bonds which were purchased by them in good faith and to which they are entitled under the decisions of this Court. The enforcement of the decrees of the State Court in the judgment of ouster and the injunction suits referred to would destroy the value of complainant's judgment and bonds by taking away more than 60% of the security which was originally pledged for the payment of the same and would impair the obligation of the contract of the town which pledged its full faith and credit to levy a tax upon all the taxable property which was within said town at the time the bonds were issued.

XIV.

On the 15th day of November, 1932, complainant herein filed a bill of complaint in this Court, and while the proceedings for the issuance of the peremptory writ of mandamus were pending gave notice to the said

town and to its officials and to all property owners who had intervened in the mandamus cause of its intention to apply for a temporary injunction restraining the defendants from asserting or in any manner utilizing or attempting to enforce the judgment of ouster and enjoining and restraining the taxing officials of the town of North Miami and the Clerk of the Circuit
15 Court of Dade County from failing to perform the duties required of them by law. Hearing was had before this Honorable Court upon said notice, and at said hearing the Court in order to avoid a conflict between the jurisdictions of the State and Federal Court requested the interveners to discontinue their litigation in the State Court and allow the decision of the Federal Court on questions of law to be conclusive. Complainant thereupon agreed to withdraw its application for a temporary injunction in consideration of such an agreement and an oral stipulation was entered into between the parties in open Court; as a result of such stipulation complainant is informed and believes that no further action was taken in the State Court in the cases then pending, but subsequently at a time the exact date of which is unknown to the complainant, Ocean Beach Heights, Inc., joined in a suit originally instituted by S. M. Tatum, Inc., to restrain the Clerk of the Circuit Court from issuing a tax deed to a holder of a tax certificate issued by the town, and prosecuted such suit to a final decree, obtaining a permanent injunction from the Circuit Court of Dade County, Florida. An appeal to the Supreme Court of Florida was taken from said decree by the town of North Miami, and same was affirmed by decision of the Supreme Court of Florida March 21, 1934, petition for rehearing being subsequently denied. Complainant is informed and believes that the Ocean Beach Heights, Inc., and other property owners in the territory east of Bay Biscayne are now demanding of the Clerk of the Circuit Court cancellation of the tax certificates against their property and are threatening to enforce such de-

mand by legal action. Complainant would show to the Court that it relied upon the oral stipulation of the parties made in open Court as above alleged, and has not again applied to this Court for an injunction under the original bill since such oral stipulation was made. After the decision of the Circuit Court of Appeals above described, counsel for interveners therein advised complainant that their clients were not bound by the oral stipulation inasmuch as the Circuit Court of Appeals had not passed upon the merits of the case. But complainant alleges that all of the defendants who
16 became parties to said mandamus and said stipulation are or should be estopped from availing themselves of the decision of the State Court by reason of the decision in this Court under the peremptory writ, as the decision was not reversed by the Circuit Court of Appeals and they are also estopped by reason of their having intervened in said mandamus suit from questioning the decree of this Court rendered therein holding that their lands were liable for taxes levied and to be levied for the payment of the judgment and bonds and coupons held by complainant and others as well. The original bill of complaint referred to in this paragraph has been dismissed by the complainant upon its motion by an order of this Court dated the 13th day of November, 1934, said dismissal being without prejudice to the rights of the complainant to file this bill of complaint, copy of the order of this Court being hereto attached, by reference made a part of this bill and marked Exhibit A.

XV.

Complainant alleges and charges that the judgment described in paragraph VIII of this Bill of Complaint are all void in toto as against the rights of your complainant and other holders of bonds to have taxes levied upon all the property which was within the town limits at the time the said bonds were issued, and said judg-

ment of ouster in and by its terms seeking to oust said town from exercising the power of taxation against the property therein described for the purpose of paying its obligations, will impair the contract made by said town with your complainant and other holders of bonds by depriving them of the major portion of the security which was pledged by said bonds and the statutes authorizing the same for the payment thereof in violation of Section 10, Article I of the Constitution of the United States and Section 17 of the Declaration of Rights and the Constitution of the State of Florida. Said judgment has already delayed the town in the payment of its obligations and will tend to further delay and injure the complainants herein and will diminish the value of the contracts held by your complainant and other bondholders, by excluding
17 from the levy of the taxes pledged more than 60% of the assessed value of said town after the accruing of the contract rights against the same. Enforcement of said decree of ouster and of the injunctions issued as against the rights of the complainant and other bondholders would deprive them of their property and property rights without due process of law contrary to the Fourteenth Amendment to the Constitution of the United States and Section 12 of the Declaration of Rights and Constitution of the State of Florida, as neither complainant nor any other holder was a party to said actions. The effect of the same would further be to enable the said city and its property owners to retain the benefits derived from the public improvements constructed with the proceeds of the bonds by using the credit of the property which was within the limits of the municipality at the time said bonds were issued and at the same time to prevent the city from levying and collecting taxes for the payment of complainant's judgment and bonds and coupons owned by it from the properties described herein. The facts hereinabove alleged show that the properties which would remain within the said town limits after the

exclusion of the territory above described would be wholly insufficient to enable the town to pay said bonded debt by the levy of taxes on the property still within the limits of said town, it would work such a hardship upon the individual property owners that taxes would not be paid, and would be so great as to be uncollectible, and payment to the complainant and other bondholders would be indefinitely delayed. The enforcement of such judgment of ouster and decrees of the State Court against complainant and other bondholders of said town would be contrary to all recognized principles of equity and standards of good conscience by reason of the facts above set forth.

The judgment of the State Court in the case of Alta Cliff Company, et al., vs. Leatherman also served to deprive the complainant herein of his vested rights in taxes already levied by said town for complainant and other bondholders without due process of law in that it attempts to cancel taxes theretofore levied by the town of North Miami, formerly Miami Shores,
18 for the payment of its just obligations and debts incurred by it in reliance upon the validity of its organization and incorporation and the inclusion of properties above described without complainant or any bondholder having been a party thereto contrary to the Fourteenth Amendment to the Constitution of the United States, and contrary to Section 12, Declaration of Rights of the Constitution of the State of Florida.

XVI.

Normandy Beach Development Company, North Island Development Company, Ocean Beach Heights, Inc., and other owners are now demanding cancellation of the outstanding tax certificates issued against their properties by the Town of Miami Shores as a result of the sale of such properties for the non-payment of

taxes levied by the town of Miami Shores, now North Miami, and are urging as a basis for such cancellation the decision of the Supreme Court of Florida in the case of Alta Cliff Company, et al., vs. E. B. Leatherman; and complainant is fearful that unless said E. B. Leatherman, Clerk, is restrained and enjoined he will cancel all outstanding tax certificates and deliver them to the property owners to the damage and detriment of the complainant and other bondholders and thereby cause them irreparable damage.

XVII.

That there has recently been filed a proceeding in the nature of a quo warranto by the State of Florida, on the relation of Cary D. Landis, Attorney General, and Harvey B. Graves and Annie M. Johnson, as co-relators, against the town of North Miami, formerly Miami Shores, seeking to exclude additional acreage from the boundaries of said town, said additional acreage being located on the west side of Bay of Biscayne, which will tend to further destroy the value of complainant's securities, if the same be granted, and complainant is not a party to that proceeding.

XVIII.

Unless the said defendant property owners, taxpayers and each of them, are restrained from claiming the benefit of said decree of ouster described in
19 paragraph VIII or from attacking the validity of the incorporation of said town to which they have consented and which they are now estopped from attacking, and unless they are restrained from questioning, interfering with or enjoining the collection of taxes levied by the said town of North Miami, or the issuance of tax deeds upon tax certificates complainant alleges that the said defendants and other

persons will continue to harass the city officials by the institution of further litigation by resisting the payment of taxes leved by said city for the payment of the judgment of your complainant and the principal of the bonds and interest which will accrue upon the same, and by the institution or prosecution of a multiplicity of other suits, and the value of the complainant's contract will thereby be diminished and depreciated.

Complainant alleges also that neither it nor any other bondholder has any adequate remedy at law for the protection of its rights against said decrees of the State Court. Complainant has already exhausted its remedies at law and has secured no decision on its rights in a suit to which it was a party despite its efforts to obtain such results. Moreover, the owners of property in said territory east of the Bay have recently announced their intention not pay any taxes levied for bonds and interest and if they are permitted to continue their litigation with such town without making complainant or other bondholders a party to the same a great injustice will be done to the holders of the bonds of said town.

Wherefore, your complainant prays that as it is without remedy save in a Court of equity:

1. That this Court will take jurisdiction of this cause of action.

2. That a temporary injunction be entered by this Court enjoining and restraining the defendants Town of North Miami, formerly Miami Shores; North Island Investment Company, a corporation, D. Richard Mead, as Trustee in Bankruptcy of Indian Creek Holding Company, a corporation, the Normandy Beach Development Company, a corporation; Lucille F. Ensign and her husband, Walter C. Ensign; Ocean Beach Heights, Inc., a corporation; Home Mortgage Company, a corporation, Surf Hotel Corporation,

a corporation, Creek Realty Company, a corporation, Tatum's Ocean Park Company, a corporation, Indian Creek Club, a corporation (formerly Indian Creek Golf Club, a corporation) and any other persons who may claim the benefit of the decree or order or judgment of the State Court in the case of State v. Mahood, et al., as above set forth, from asserting or in any manner utilizing or enforcing or attempting to enforce the said judgment or decree for the purpose of preventing the assessment, levy and collection of any taxes which may be levied by the town of North Miami, Florida, formerly Miami Shores, for the payment of the judgment of your complainant or for the payment of principal or interest due upon bonds issued by said town of North Miami, formerly Miami Shores; and that the said Town of North Miami, formerly Miami Shores, and D. W. Robbins, Mayor of said town; J. H. Gribble, Tax Collector and Tax Assessor of the town of North Miami; Mrs. E. May Avil, Clerk and Treasurer of the Town of North Miami, and E. C. Harner, Mrs. Cecille Sevier, Mrs. Ella F. Klefeker, D. D. Avil and H. W. Jones, as members of and constituting the City Council of said town of North Miami, formerly Miami Shores, be enjoined and restrained from refusing to perform in full its, his or their legal duties in the matter of assessing, levying and collecting taxes and/or assessments already levied or hereafter to be levied against the lands included in the said decree of the Circuit Court of Dade County, Florida, in the case of State v. Mahood, as herein specifically described and from failing or refusing to take any action or to institute any proceedings which may be required by the statutes in such cases made and provided for compelling the payment of any taxes and/or assessments levied by the said town of North Miami, formerly by Miami Shores, for the purpose of providing funds with which to pay the said judgment of this complainant and/or the bonds held and owned by it and/or the coupons which may hereafter mature upon any of said bonds, and/or bonds and

coupons of said town of North Miami, formerly Miami Shores, held by other persons, either by the levy of taxes as required by law, by the sale of said property for non-payment of taxes, the issuance of tax certificates, the sale of said tax certificates, the issuance of tax deeds or the enforcement of any of the same by foreclosure proceedings or any other duties required of them to be performed under the Statutes of the State of Florida.

3. That a temporary injunction be entered by this Court restraining and enjoining said defendants North Island Investment Company, a corporation, D. Richard Mead, as Trustee in Bankruptcy of Indian Creek Holding Company, a corporation; the Normandy Beach Development Company, a corporation; Lucille F. Ensign and her husband, Walter C. Ensign; Ocean Beach Heights, Inc., a corporation, Home Mortgage Company, a corporation; Surf Hotel Corporation, a corporation; Creek Realty Company, a corporation; Tatum's Ocean Park Company, a corporation, Indian Creek Club, a corporation (formerly Indian Creek Golf Club, a corporation), or any other person, firm or corporation owning, holding or interested in any property within the boundaries of the town of North Miami, formerly Miami Shores, as originally constituted, from instituting any action at law or in equity against E. B. Leatherman, as Clerk of the Circuit Court of Dade County, or his successors in office, to compel the cancellation of tax certificates held by him and issued by the Town of North Miami, formerly Miami Shores, on account of the non-payment of taxes levied by it on property east of Bay Biscayne, or preventing him from selling said tax certificates or issuing tax deeds thereon, and especially enjoining and restraining the defendant Alta Cliff Company and said Ocean Beach Heights, Inc., from enforcing the decree of the Circuit Court of Dade County canceling and declaring void the tax certificates described in the suit of Alta Cliff Co. et al., vs. E. B.

Leatherman, et al., or preventing the issuance of tax deeds thereon.

4. That a temporary restraining order be entered against said E. B. Leatherman, as Clerk of the Circuit Court of Dade County, Florida, enjoining and restraining him from canceling or destroying tax cer-
22 tificates issued by the Town of North Miami, formerly Miami Shores, on account of the non-payment of taxes levied by it against property within the limits of said town and east of Bay Biscayne or from delivering the same to the tax-payers or property owners therein or to any other person whomsoever except by say of redemption or purchase in accordance with the laws of the State of Florida.

5. That a temporary restraining order be entered against said defendants, North Island Investment Company, a corporation, D. Richard Mead, as Trustee in Bankruptcy of Indian Creek Holding Company, a corporation; the Normandy Beach Development Company, a corporation; Lucille F. Ensign and her husband, Walter C. Ensign, Ocean Beach Heights, Inc., a corporation, Home Mortgage Company, a corporation, Surf Hotel Corporation, a corporation; Creek Realty Company, a corporation, Tatum's Ocean Park Company, a corporation, Indian Creek Club, a corporation (formerly Indian Creek Golf Club, a corporation), from preventing in any manner or interfering with the levy, collection or enforcement by the officials of the town of North Miami, of any tax already levied or which may hereafter be levied by said officials for the payment of said judgment of complainant or any other bonds or coupons or interest accruing thereon whether the same be the original bonds or bonds issued to refund the same until said indebtedness be paid in full.

6. That upon final hearing of this cause, said temporary injunctions hereinabove prayed for be made

permanent against each and all of the defendants jointly and severally.

7. For such other and further relief as to this Court may seem proper and as equity and justice may require.

And your petitioner will ever pray.

GILES J. PATTERSON,
Solicitor for Complainant, The Brown Crummer Investment Company, a corporation.

23 State of Florida,
County of Duval.

Personally appeared before me Giles J. Patterson, who being by me first duly sworn deposes and says; that he is attorney for the Complainant in the foregoing cause, and as such has authority to make this affidavit; that he has read the Bill of Complaint and knows the contents thereof, and that the same are true.

GILES J. PATTERSON.

Sworn to and subscribed before me this 28th day of November, A. D. 1934.

(Notarial Seal)

MARION D. TROWELL,
Notary Public, State of Florida at Large.

My Commission Expires, May 7, 1938.

EXHIBIT "A".

In the United States District Court in and for the Southern District of Florida. No. 1136-M-Eq.

United States of America, ex rel The Brown Crummer Investment Company, a corporation organized and existing under the laws of the State of Kansas, Complainant,

vs.

Town of North Miami, formerly Town of Miami Shores, a municipal corporation, et al., Defendants.

Order.

This matter coming on before me this 13th day of November, A. D. 1934, upon the motion of the complainant for leave to dismiss the bill of complaint without prejudice to the right of the complainant to file subsequent proceedings involving the matters and things set forth in the original bill of complaint filed herein and amended and supplemental bill heretofore tendered,

It Is Hereby Ordered, Adjudged And Decreed that the bill of complaint herein filed and the amended and supplemental bill which was tendered to this
24 Court be and the same are hereby dismissed at the cost of the complainant.

It Is Further Ordered, Adjudged And Decreed that this dismissal of said cause shall be without prejudice to the rights of the complainant to file a subsequent bill of complaint involving the same questions of law and fact raised or sought to be raised in the original bill and the amended and supplemental bill above referred to.

Done And Ordered in Chambers at Miami, Florida, this 13th day of November, A. D. 1934.

HALSTED L. RITTER,
Judge.

On the 1st day of December, A. D. 1934, Subpoena In Equity was issued, dated December 1, 1934, and, on said December 1, 1934, was served on the Town of North Miami, formerly Town of Miami Shores, and was filed in the Clerk's office on December 6, 1934.

On the 29th day of December, A. D. 1934, the Town Of North Miami filed its Answer, in the words and figures following, to-wit:

ANSWER OF TOWN OF NORTH MIAMI, ET AL., TO BILL OF COMPLAINT.

(Title Omitted.)

Come now the Town of North Miami, a municipal corporation; Dana W. Robbins, Mayor of said
25 Town; J. H. Gribble, Tax Collector and Tax Assessor thereof; E. May Avil, Clerk and Treasurer thereof; and E. C. Harner, Mrs. Cecille Sevier, Mrs. Ella F. Klefeker, D. D. Avil and H. W. Jones, as members of and constituting the Town Council of the Town of North Miami, defendants, and for several and joint answer to the complainant's bill of complaint herein, say:

I.

These defendants admit that the complainant is a citizen of the State of Kansas and that the amount in

controversy exceeds the sum of Three Thousand Dollars, exclusive of interest and cost.

II.

These defendants admit that the Town of North Miami was formerly known as the Town of Miami Shores, and was organized as a municipal corporation in 1926, under Sections 1825 to 1828, inclusive, of the Florida Revised General Statutes of 1920 (Sections 2935 to 2938 of the C. G. L. of Florida of 1927); that it is still an existing municipal corporation of the State of Florida; that at an Extraordinary Session of the Legislature of Florida, in 1931, the name of said municipality was by special act changed from "Town of Miami Shores" to "Town of North Miami"; that the Florida Legislature also enacted certain special laws for the said municipality in 1927, in 1929 and in 1931, to-wit, Chapter 13103 of the Special Acts of Florida of 1927; Chapter 14237 of the Special Acts of Florida of 1929; and Chapters 15347, 15822 and 15823 of the Special Acts of Florida of 1931; and that the State of Florida, through its legislative department, recognized and confirmed the existence of the said Town of North Miami, as a municipal corporation, thereby. These defendants say further that they admit that the said Town of North Miami assumed and exercised all of the functions and powers granted to it under and by virtue of the laws above cited, including the exercise of police powers, supervision of health, providing for the collection of garbage, providing for the elimination of mosquitoes, and otherwise, both in the territory east of Biscayne Bay and in the territory west thereof, insofar as the said territory lay within the boundaries of said municipality, as described and set forth in its original articles of incorporation.

26 III.

Answering paragraph three of the bill, these defendants say that they admit that Dana W. Robbins is the

duly qualified and acting Mayor of the Town of North Miami, and is a citizen and resident of the State of Florida; that E. B. Leatherman is the duly qualified and acting Clerk of the Circuit Court of Dade County, Florida, and is a citizen and resident of Dade County, Florida; that J. H. Gribble is the duly qualified and acting Tax Collector and Tax Assessor of the Town of North Miami, and is a citizen and resident of Dade County, Florida; that E. May Avil is the duly qualified and acting Clerk and Treasurer of the Town of North Miami, and is a citizen and resident of Dade County, Florida; and that E. C. Harner, Mrs. Cecille Sevier, Mrs. Ella F. Klefeker, D. D. Avil and H. W. Jones are the duly qualified and acting members of the Town Council of the Town of North Miami, and are citizens and residents of Dade County, Florida. Answering further, these defendants say that their co-defendants, in said paragraph named, are citizens and residents of the states, counties and cities therein specified, to the best of their knowledge, information and belief.

IV.

Answering paragraph four, the defendants say that they admit that the complainant herein did bring action against the Town of North Miami, as alleged, upon the bonds referred to, and that final judgment in favor of the complainant, and against the Town of North Miami, was entered in said action on the 19th day of June, A. D. 1931, in the sum of $11,790.00, together with cost in said suit taxed at $12.50; that no appeal was taken from said judgment and that the time for taking appeal has long since expired; and that no part of said judgment has been paid. Answering further, the defendants say that they are informed and believe
27 that the complainant is also the owner and holder of many other bonds, issued by the Town of North Miami, similar to those de-

scribed in said paragraph, which have matured either as to principal, or interest, or both, and which are unpaid. Answering further, these defendants say that they admit that the Town of North Miami has no property subject to execution and no means of raising money with which to pay complainant's judgment, or the bonds aforesaid, other than by the exercise of the power of taxation.

V.

Answering paragraph five these defendants say that they admit that the municipality now known as the Town of North Miami did pledge its full faith and credit for the payment of the said bonds, and thereby became obligated to levy such taxes upon the taxable property within its corporate area, at the time of the issuance of said bonds, as might be necessary to pay the same, and these defendants say further that they have endeavored to levy and collect such taxes upon all of said taxable property, as aforesaid, but that on account of conditions which are, and ever have been, entirely beyond their control, they have been unable to collect, by way of taxation or otherwise, sums of money sufficient to retire said bonded indebtedness, either wholly or in part.

VI.

Answering paragraph six these defendants say that they admit that the proceeds from the sale of the bonds aforesaid were expended by the municipality in the construction of public improvements; that said improvements are exempt from levy and sale; and that a portion of the proceeds of said bonds were expended on improvements within the boundaries of the property described in the writ of quo warranto mentioned in complainant's bill.

VII.

Answering paragraph seven, these defendants say that at the time of the incorporation of the municipality now known as the Town of North Miami,
28 Southern Florida was experiencing one of the greatest land "booms" in history. Villages, hamlets, towns and cities were expanding phenomenally. Outlying areas were rapidly being subdivided and platted for building purposes, and were being improved with streets, sidewalks, water mains and other utilities. The population of the City of Miami, lying a few miles south of the said Town of North Miami, had doubled and trebled in a very short period of time, and it was commonly believed that great cities would grow up in Dade County, Florida, around the waters of Biscayne Bay, whereon the present Town of North Miami is situated. And these defendants say that they admit that at the time of the organization of said Town, none of the defendants herein, nor any other owner of property lying within the original corporate area thereof, made any objection to the inclusion of his, her or their property within the limits of the municipality; that the area constituting the original corporate limits of the Town of North Miami, formerly Miami Shores, was sparsely populated, not having within its borders any built-up "village" or any group of houses or buildings, but the inhabitants of said area were widely scattered therein, the land constituting said area consisting largely of property owned by real estate subdividers, the same not being in any sense agricultural land, or fit for any purpose other than for subdividing and building. Answering further, the defendants say that they admit that the property owners in said area, or some of them, advertised in newspapers the fact that their property had been included in the corporate limits of the Town of North Miami, formerly Miami Shores, and that full publicity was given to the fact that said Town had been duly incorporated. Answering further, these defend-

ants say that they admit all of the other allegations contained in paragraph seven of the said bill of complaint.

VIII.

Answering paragraph eight, these defendants say that they admit that on the 12th day of August, A. D. 1929, there was filed in the Circuit Court of Dade County, Florida, a quo warranto proceeding as in said
29 paragraph described. Answering further, these defendants say that in said action and on, to wit, the 30th day of March, 1930, one of the Judges of the Circuit Court of Dade County, Florida, made and entered a judgment ouster, in words and figures as follows:

"JUDGMENT OF OUSTER.

In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County Florida. Quo Warranto. No. 12239.

State of Florida, ex rel, Fred H. Davis, Attorney General, Relator,

North Island Investment Company, a corporation, Indian Creek Gulf Club, a corporation, The Normandy Beach Development Company, a corporation, Lucille F. Ensign, joined by her husband, Walter C. Ensign, Co-Relators,

vs.

John A. Mahood, Howard Henshaw, J. J. Thompson, Louis Nathan, John V. Shellhorse, H. Goodrich, Jack Bettles, Wilbur Jones, L. H. Browning, Rubin Bennett and Town of Miami Shores, a pretended municipal corporation, Respondents.

This cause coming on to be heard this day upon the information herein, upon the answer of the respondents

filed thereto and the demurrer of Relator and Co-Relators, the motion of the Relator and Co-relators to strike, the answer of the Respondents in its entirety and upon the motion of the Relator and Co-relators for a judgment of ouster, and the Court having heard argument of counsel for the respective parties, and being fully advised in the premises, it is

Ordered and adjudged that the respondents, John A. Mahood, Howard Henshaw, J. J. Thompson, Louis Nathan, John V. Shellhorse, H. Goodrich, Jack Bettles, Wilbur Jones, L. H. Browning and Rubin Bennett be and they are hereby ousted, excluded and prohibited from exercising the offices, franchises and
30 privileges of a municipality or municipal corporation, and of the Mayor, Councilmen, Tax Collector and Town Marshal thereof under the purported license and charter of the pretended municipality of the Town of Miami Shores.

It is further ordered and adjudged by the Court that the Relator and Co-Relators do have and recover of the respondents all costs in this behalf sustained: Clerks cost $19.95.

Done and ordered in Chambers at Miami, Florida, this 31st day of March, A. D. 1930.

PAUL D. BARNS,
Circuit Judge.

Filed this 31 day of Mar. A. D. 1930 and recorded this 1 day of Apr. A. D. 1930 at 9:00 A. M. in Circuit Court Min. Book 48 on Page 45.

E. B. LEATHERMAN,
Clerk Circuit Court.
By M. L. BRADY,
Deputy."

Answering further, these defendants say that the judgment of ouster, above quoted, entered in the quo

warranto proceeding referred to in paragraph eight of complainant's bill, was so made and entered by the Circuit Court of Dade County, Florida, pursuant to an order therefor, previously entered by one of the Judges of said Court, in words and figures as follows:

"ORDER OF JUDGMENT OF OUSTER.

In the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County. Common Law. No. 12239-D.

State of Florida, ex rel, Fred H. Davis, Attorney General, Relator,

North Island Investment Company, a corporation, Indian Creek Golf Club, a corporation, The Normandy Beach Development Company, a corporation, Lucille F. Ensign, joined by her husband, Walter G. Ensign, Co-Relators,

vs.

John A. Mahood, Howard Henshaw, J. J. Thompson, Louis Nathan, John V. Shellhorse, H. Goodrich, Jack Bettles, Wilbur Jones, L. H. Browning, Rubin Bennett and Town of Miami Shores, a pretended municipal corporation, Respondents.

31 This matter is before this Court upon the information of Quo Warranto of the Relators in the above styled cause, the answer of the respondents thereto, and the demurrer to said answer, motion for judgment of Ouster and Motion to strike the answer of the said relators, and argument of counsel for the respective parties having first been had, it appears unto the Court that the municipal corporation known as the Town of Miami Shores was self-incorporated, pursuant

to Section 2935, C. G. L. of 1927 (et seq) which provides:

'It shall be lawful for the male inhabitants of any hamlet, vollage or town in this State, not less than twenty-five in number, who shall have the qualifications hereinafter prescribed, to establish for themselves a municipal government with corporate powers and privileges as hereinafter provided.'

"The question before this Court is not whether or not the Legislature has rightfully delegated to a municipal corporation legislature authority, but the question before this Court is:

1. Whether or not Section 2935 C. G. L. is constitutional by permitting any hamlet, village or town to incorporate themselves, and

2. Whether or not in the event said act is constitutional, said hamlet, village or town has abused the powers granted by said act.

"It appears from the record in this case that the area attempted to be incorporated, known as Miami Shores, consists of approximately 10,000 acres, or approximately sixteen square miles. Acording to Webster's New International Dictionary, a hamlet is

'A little cluster of houses in the country; a small group of houses belonging to a parish or village;'

and a village is

'A small aggregation of houses in the country, being in general less in number than in a town or
32 city, and more than a hamlet;'

and a town is

'Any large collection of houses or buildings, public or private, constituting a distinct place with a name and not incorporated as a city.'

"It appears from the record in this case that thirty-eight qualified electors favored the incorporation of the said territory as the City of Miami Shores, and that there resided in the said territory forty-nine registered voters. Is it possible that such a vast area containing only forty-nine qualified electors could be considered (1) a hamlet, (2) a village, or (3) a town; and should the Court presume that such a corporation was had by the 'male inhabitants' as provided by Section 2935, C. G. L. when the record is silent thereto?

"Even assuming that the act providing for self-incorporation is constitutional, would it not be an unreasonable exercise of power for thirty-eight citizens of the territory constituting of only forty-nine qualified electors, to incorporate an area of approximately sixteen square miles, and is it possible for such an area to be held to be (1) a hamlet, (2) a village, or (3) a town?

"In the case of State vs. City of Stuart, 120 So. 335, the Court held that the establishment and extension of municipal boundaries is exclusively legislative, but that the wrongful exercise of an unlimited power granted to the Legislature was subject to judicial review.

"The area, but not the population compares favorably with other metropolises, to-wit:

	Population	Area
Jacksonville, Florida	140,700	9,824 acres
Tampa, Florida	113,400	16,640 acres
Miami, Florida	156,700	39,680 acres
Nashville, Tennessee	139,600	16,853 acres
Greensboro, N. C.	51,900	10,600 acres
Dallas, Texas	217,800	18,108 acres
Austin, Texas,	45,135	10,240 acres

According to World's Almanac 1930.

"If section 2935 C. G. L. is constitutional, if requires that the boundaries of the area proposed to be incorporated should approximately coincide with the boundaries of such hamlet, village or town.

"The history of Section 2935 C. G. L. is that it originally read, according to Section 1, of Chapter 1688 of the Acts of 1869, viz:

'That it shall be lawful for the male inhabitants of any hamlet, village or town in this State not less than fifty in number, who shall have the qualifications hereinafter prescribed to establish for themselves a municipal government with corporate powers and privileges, under the terms and provisions of this act.'

and was thereafter changed in 1875 to read as now contained in Section 2935 C. G. L. The constitution of 1868, in force in 1875, provided:

'The Legislature shall provide by general law for incorporating such municipal, educational, agricultural, mechanical, mining, and other useful companies or associations as may be deemed necessary.' Art 4, Sec. 22, Acts 1868.

"The Constitution of 1885, now in force in this State provides that

'All laws now in force not inconsistent with this Constitution shall continue in force until they shall expire by their own limitations, or be repealed by the Legislature.' Art. 18. Sec. 2, Acts 1885.

"and the Constitution of 1885 further provides that

'The Legislature shall have power to establish, and to abolish, municipalities, to provide for their government, to prescribe their jurisdiction and powers, and to alter

or amend the same at any time. When any municipality shall be abolished, provisions shall be made for the protection of its creditors.' Sec. 8, Art. 8, Constitution of Florida.

34 "It appears unto this Court that if the said area contains a hamlet, village or town, that it is self-evident the corporate limits of Miami Shores have not been confined to such hamlet, village or town, and that the exercise of the power, if granted, has been unreasonably exercised by including a much greater area.

"It is held in the case of Pursley vs. City of Fort Myers, 100 So. 366, as follows:

'Section 8 of Article 8 of the Constitution, empowering the Legislature to establish and abolish municipalities, to provide for their government, and to prescribe their jurisdiction and powers, and to alter and amend the same at any time, is an exclusive assignment of power to the Legislature.'

"It may be that the de facto municipal corporation of Miami Shores is indebted by bond issues or otherwise, but there are ample provisions by law and in equity to take care of such matters, and ultimately, if necessary, legislation may be sought to enforce the debts of said town which are by no means discharged by this ruling.

"It further appears unto the Court that the law of laches and estoppel is sometimes applied to the State in bringing such proceedings, but on account of the extraordinary circumstances of this cause, the Court is of the opinion that the law of laches or estoppel is not applicable in this case against the State.

"It is therefore considered, ordered and adjudged that a judgment of ouster be entered against the above named respondents.

"Done and ordered at Miami, Florida, this 27th day of March, A. D. 1930.

PAUL D. BARN,
Circuit Judge.

Filed this 27 day of March, A. D. 1930 and recorded in Circuit Court Minutes, No. 48 Page 10.

E. B. LEATHERMAN,
Clerk Circuit Court.
By M. L. BRADY,
Deputy."

35 And these defendants say that the said judgment of ouster was reviewed by the Supreme Court of Florida and reversed, or partially reversed, and said action was remanded to the Circuit Court of Dade County for further proceedings consistent with the opinion and judgment of the Supreme Court of Florida, and that on the 18th day of December, A. D. 1931, a second, and final, judgment of ouster was entered in said cause, in words and figures as follows:

"JUDGMENT OF OUSTER.

In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. In Chancery Cause. No. 12239-D.

State of Florida, ex rel Cary D. Landis, Attorney General, et al., Relator and Co-relators,
vs.
John A. Mahood, et al., Respondents.

This cause coming on for trial before the Honorable A. V. Long, Judge Pro Haec Vice of the above styled Court, and Fred W. Wieland, Foreman of the jury and five other good and lawful men of the County of Dade

and State of Florida, being duly sworn according to law, and after having heard the testimony and evidence produced before them, and the Court having, upon motion of the attorneys for the Relator and Co-Relators, directed a verdict in favor of the Relator and Co-relators at the conclusion of all the evidence, and the jury having returned in open Court, the following verdict, in accordance with the direction of the Court:

'We, the jury, find in favor of the Relator and Co-Relators and against the Respondents.

'So say we all.

'Dated at Miami, Dade County, Florida, this 17th day of December, A. D. 1931.

FRED W. WEILAND,
Foreman.'

36 "It is therefore considered, ordered and adjudged by the Court that the Respondents Louis Nathan, as Mayor, Howard Henshaw, D. D. Avil, John V. Shellhorse, F. D. Snow, Wilbur Jones, G. A. Raymond, and W. E. Graves, as Councilmen, and John A. Mahood as Clerk, and L. H. Browning, as Tax Collector, and Reuben Bennett, as Marshal, of the Town of North Miami (formerly known as Town of Miami Shores) and the Town of North Miami (formerly known as Town of Miami Shores), be, and they each are hereby ousted excluded and prohibited from exercising the offices, franchises and privileges of a municipality or municipal corporation, and of the Mayor, Councilmen, Tax Collector, Clerk and Town Marshal thereof, under the purported license, incorporation and/or charter of the Town of North Miami, (formerly known as Town of Miami Shores) over or upon the following described lands, or any part thereof, to-wit:

"Commencing for a point of beginning at the intersection of the high water mark of the Atlantic Ocean

with the south boundary line of fractional Section 35 in Township 52 South, Range 42 East, Dade County, Florida, run west along the south boundary of Section 35 and continue along the south line of Sections 33 and 34 to the intersection of the east boundary of the City of Miami; thence north northeasterly along the said Eastern limits of the City of Miami, produced a distance of 2750 feet; thence in a northeasterly direction to the northeast corner of fractional Section 27, Township 52 South, Range 42 East, thence continue in a northeasterly direction deflecting to the left from the last mentioned course to the northeast corner of the southwest one-quarter (SW¼) of the southwest quarter (SW¼) of fractional section 23-52-42; thence north along the east line of the west one-half (W½) of the west one-half (W½) of fractional Section 23-52-42 the north boundary of said Section 23; thence east along the said north boundary line of said Section 23 to the intersection of the high water mark of Atlantic Ocean; thence continue east along the last mentioned course produced a distance of 1500 feet; thence in a
37 southerly direction parallel to and 1500 feet east of the high water meander line of the Atlantic Ocean to the south line of fractional Section 35, Township 52 South, Range 42, East, produced easterly; thence west along the last said south line of Section 35 to the point of beginning.

"It is further ordered and adjudged by the Court that the lands above described which constitute all that portion of the purported Town of Miami Shores east of Bay Biscayne, and between said Bay Biscayne and the Atlantic Ocean, are not, and never were legally incorporated in the said Town of Miami Shores, now known as Town of North Miami, and that said lands were never a part of said purported Town and that their attempted inclusion therein was illegal, null and void and without warrant or authority of law.

"It is further ordered and adjudged that the Relator and Co-Relators herein do have and recover of the Respondents all costs in this behalf sustained.

"Done and ordered in open Court at Miami, Dade County, Florida, this 18th day of December, A. D. 1931.

A. V. LONG,
Circuit Judge Pro Haec Vice.

Filed this 18 day of Dec., A. D. 1931, and recorded in Circuit Court Minutes, No. 62, Page 303, E. B. Leatherman, Clerk Circuit Court, By W. C. McGolthlin, Deputy.

And these defendants say further that the said last mentioned judgment of ouster never has been reversed, vacated, annulled or set aside in any manner or to any extent by any Court of the State of Florida, and as to the Courts of said State, it remains in full force and effect.

IX.

Answering paragraph nine of the bill, these defendants say that they are informed, and believe, that the matters and things therein stated are true and correct, and upon information and belief, confess the same.

38 X.

Answering paragraph ten of the bill, these defendants say that they are informed, and believe, that the matters and things therein stated are true and correct, and upon information and belief, confess the same.

XI.

Answering paragraph eleven, these defendants say that they admit the averments contained in said paragraph.

XII.

Answering paragraph twelve, these defendants say that they admit all of the allegations therein contained with reference to the outstanding bonded indebtedness of the Town of North Miami, and as to the existing defaults in connection therewith.

Answering said paragraph further, these defendants say that in the mandamus proceeding therein referred to, the Judge of the United States District Court in and for the Southern District of Florida made and entered, on the 23d day of January, A. D. 1933, a certain order, having the force and effect of a final judgment, in words and figures as follows:

"OPINION OF THE COURT.

Filed Miami, Fla. Jan. 23, 1933.

(Title Omitted.)

RITTER, District Judge:

This cause comes on for final hearing upon the petition for peremptory writ. On October 7, 1932, an alternative writ of mandamus was issued, directing Louis Nathan, as Mayor of the Town of North Miami, W. E. Graves, H. W. Jones, H. W. Henshaw, D. B. Avil, F. D. Snow, and J. V. Shellhorse, as and constituting the Town Council; John A. Mahood, as City Clerk, Tax Assessor and Treasurer, L. H. Browning as Tax Collector, and their successors in office, to forthwith fix a millage and levy a tax on all taxable property within the said Town of North Miami, formerly Miami Shores, including the property on the east side of Bay Biscayne, as described in Paragraph 6 of the writ, to
39 produce sufficient funds to pay the judgment as rendered against said town by this Court

on June 19, 1931, amounting to $11,802.50, with accrued interest, or in default thereof cause be shown on the 20th day of October, 1931, at ten o'clock A. M.

Respondents have filed answers and various property owners of the lands in question have inter-pleaded, setting up primarily as a defense the decisions of the State Court segregating the said lands from the town, and the fact that no benefits have accrued to said lands from the funds obtained from the sale of the bonds on which the judgment aforesaid was based.

By stipulation of all parties, the testimony has been taken by a special master. This testimony, upon examination, is found to relate almost wholly to the question of fact aforesaid—that is, no benefit to the lands in question arising from their inclusion in the town and the distribution thereof in public service. The testimony does, however, show the knowledge of the intervening property owners, of the fact that their lands were included in the town limits and that some of the bond money was spent thereon in an effort to eradicate mosquitoes, police, collection of garbage and waste, and building permits in the town were issued. The funds were used to build a Town Hall, construct a water plant, streets, sidewalks, for cleaning out swamps and eradicating mosquitoes, for fire equipment, fire wells, police service, and collection of garbage and waste. At the time of incorporation and issuance of these bonds, the 125th Street Causeway was under construction, or about to be, and a greater portion of the same was actually constructed to connect the lands on the east and west sides of Biscayne Bay. The hurricane of 1926 destroyed what was done.

The questions of law involved were raised by admissions in the pleadings of the Town and interveners of the records and facts relating thereto. These facts were before me when I decided the motion to strike

parts of the answer of interveners on March 18, 1932. In my opinion thereon I gave my reasoning on the law involved, and the case has proceeded for testimony on the facts. The testimony presents no facts in conflict with or necessitating the changing of my views as so expressed on the determining law of the case. They only serve to emphasize and make more certain what I said, and confirm the ruling made. Therefore, my said opinion is herewith adopted as my opinion now, together with what I have herein said, on final judgment herein.

The alterative writ is made peremptory, and an order may be prepared accordingly.

At Miami, Florida, this 21st day of January, A. D. 1933.

HALSTED L. RITTER,
Judge."

Aswering further, the said defendants say that they admit all of the other averments contained in said paragraph of complainant's bill, not hereinbefore specifically admitted.

XIII.

Answering paragraph thirteen of the bill, these defendants say that they admit the averments therein contained.

XIV.

Answering paragraph fourteen of the bill, these defendants say that they admit the averments therein contained.

XV.

Answering paragraph fifteen of the bill, these defendants say that they admit the averments therein contained.

XVI.

Answering paragraph sixteen of the bill, these defendants say that they admit the averments therein contained.

XVII.

Answering paragraph seventeen of the bill, these defendants say that they admit the averments therein contained.

XVIII.

Answering paragraph eighteen of the bill, these defendants say that they admit the averments therein contained.

41

XIX.

Answering further, these defendants say that all of the bonds of the Town of North Miami, formerly known as Town of Miami Shores, hereinbefore referred to, were issued, validated and sold long prior to the entry of the first judgment of ouster on, to-wit, the 31st day of March, A. D. 1930; that the proceeds from the sale of said bonds was used to improve all of the property lying within the original corporate limits of the municipality, including the territory east of Biscayne Bay, excluded under the judgment of ouster entered on the 18th day of December, A. D. 1931; that the owners of lands lying west of Biscayne Bay and within the corporate limits of said municipality, have, as a result of matters and things hereinbefore mentioned, and also as a result of the questions which have arisen as to the validity of the incorporation of the municipality, refused to pay taxes which the Town of North Miami has assessed, levied and attempted to collect; that the owners of property lying east of Biscayne Bay have likewise refused to pay such taxes as have been levied and assessed by said municipality; that the revenue accruing to the said municipality, by way of exercise of its power of taxation, has been inadequate for operating expenses, and that no surplus has been collected, or is collectible, under existing conditions, and these defendants are unable to pay the bonds aforesaid, and the interest coupons thereon, as they mature. And these defendants say further that

the owners of lands within the corporate limits of said municipality lying west of Biscayne Bay, have refused to pay unto the Town of North Miami municipal taxes levied and assessed on the ground that the judgments and decisions of the Courts of the State of Florida, hereinbefore referred to, have relieved and exonerated the lands lying east of Biscayne Bay from taxation for the purpose of paying and discharging said bonds, and they are contending, and ever have contended,
42 that the decisions aforesaid in operation and effect, take, or purport to take, the property of the owners of lands lying west of Biscayne Bay, solely, for the payment of taxes incurred for the improvement of the property lying both east and west of said Bay, and that this is tantamount to a confiscation of their property, and their rights, in a manner contrary to the Constitution of the United States of America.

Wherefore, having fully answered, the said defendants pray to be dismissed with their costs in this behalf expended.

PATTERSON, BLACKWELL & KNIGHT,

As Solicitors for Town of North Miami, a municipal corporation; Dana W. Robbins, Mayor of said Town; J. H. Gribble, Tax Collector and Tax Assessor; E. May Avil, Clerk and Treasurer; E. C. Harner, Mrs. Cecille Sevier, Mrs. Ella K. Kleteker, D. D. Avil and H. W. Jones, as members of and constituting the Town Council of the Town of North Miami, defendants.

By T. J. BLACKWELL.

On the 21st day of January, A. D. 1935, Subpoena In Equity was issued, and was served, January 22, 1935, on D. Richard Meade, as Trustee in Bankruptcy of Indian Creek Holding Co., and, January 23, 1935, on W. C. Ensign, as resident business agent of Normandy Beach Development Co., and on Lucille F. Ensign and Walter C. Ensign, and on Ocean Beach Heights, Inc., and was served, January 22, 1935, on Tatum's Ocean Creek Park Co., and, January 30, 1935, on Indian Creek Club (formerly Indian Creek Golf Club), and, January 23, 1935, on E. B. Leatherman, Clerk of the Circuit Court of Dade County, and, January 22, 1935, on Dana W. Robbins, Mayor of Town of North Miami, and on J. H. Gribble, Tax Collector, etc., of Town of North Miami, and on Mrs. E. May Avil, Clerk and Treasurer of said Town, and on E. C. Harner, as member of Town Council of said town,
and on Mrs. Cecil Sevier, as a member of the
43 Town Council of said Town; and, February 9, 1935, on Mrs. Ella F. Klefeker, as a member of the Town Council of said Town; and, January 22, 1935, on D. D. Avil, as a member of the Town Council of said Town; and, February 15, 1935, on H. W. Jones, as a member of the Town Council of said Town.

On the 8th day of February, A. D. 1935, Answer of E. B. Leatherman, as Clerk of the Circuit Court of Dade County, Florida, was filed.

On the 11th day of February, A. D. 1935, the defendant, Tatum's Ocean Park Company, a Florida Corporation, filed its Motion to Dismiss, in the words and figures following, to-wit:

MOTION TO DISMISS.

(Title Omitted.)

Comes now Tatum's Ocean Park Company, a Florida Corporation, one of the defendants herein, and re-

spectfully moves this Court to dismiss the above styled cause upon the following grounds:

1. That it appears upon the face of the bill that this suit does not involve a dispute or controversy within the jurisdiction of this Court, because the amount in controversy does not exceed the sum of $3000.00, exclusive of interest and costs; it appearing upon the face of the bill that the only matter in con-
44 troversy is the effect and enforcement of that certain Judgment of Ouster in the State Courts of Florida, and which Judgment of Ouster presents no particular jurisdictional amount of controversy.

2. It appears upon the face of the bill of complaint that the plaintiff has a full and complete adequate remedy at law; the bill failing to show any exhaustion on the part of the plaintiff, of its remedies at law, and particularly, the bill fails to show and allege any supplemental proceedings.

3. The bill of complaint shows upon its face that it is a proceedings to enjoin the enforcement and effect of a State Court Judgment, which relief this Court has no jurisdiction to entertain, in the premises.

4. It appears from the face of the bill that defendants, Town of North Miami and also the defendants who are the officials of said Town, are not antagonistic to the plaintiff and should be aligned upon the same side of the controversy as the plaintiff, which would deprive this Court of jurisdiction.

5. There is no equity in the bill of complaint.

Dated February 11th, 1935.

HENRY K. GIBSON,
Attorney for Tatum's Ocean Park Company.

On the 11th day of February, A. D. 1935, the defendants, Lucille F. Ensign and Walter C. Ensign filed their Motion To Dismiss, in the words and figures following, to-wit:

45 MOTION TO DISMISS.

(Title Omitted.)

Comes now Lucille F. Ensign and her husband, Walter C. Ensign, two of the defendants herein and respectfully moves this Court to dismiss the above styled cause upon the following grounds.

1. That it appears upon the face of the Bill that this suit does not involve a dispute or controversy within the jurisdiction of this Court, because the amount in controversy does not exceed the sum of $3000.00, exclusive of interest and costs; it appearing upon the face of the Bill that the only matter in controversy, is the effect and enforcement of that certain Judgment of Ouster in the State Courts of Florida, and which Judgment of Ouster presents no particular jurisdictional amount of controversy.

2. It appears upon the face of the Bill of Complaint that the plaintiff has a full and complete adequate remedy at law; the Bill failing to show any exhaustion on the part of the plaintiff, of its remedies at law, and particularly, the Bill fails to show and allege any supplemental proceedings.

3. The Bill of Complaint shows upon its face that it is a proceeding to enjoin the enforcement and effect of a State Court Judgment, which relief this Court has no jurisdiction to entertain, in the premises.

4. It appears from the face of the Bill that defendants, Town of North Miami and also the defendants

who are the officials of said Town, are not antagonistic to the plaintiff, and should be aligned upon the same side of the controversy as the plaintiff, which would deprive this Court of jurisdiction.

5. There is no equity in the Bill of Complaint.

Dated February 11, 1935.

HENRY K. GIBSON,
Attorney for Lucille F. Ensign and her husband, Walter C. Ensign.

On the 11th day of February, A. D. 1935, the defendant, Normandy Beath Development Company, an Ohio corporation, filed its Motion To Dismiss, in the words and figures following, to-wit:

46 MOTION TO DISMISS.

(Title Omitted.)

Comes now the Normandy Beach Development Company, an Ohio corporation, one of the defendants herein and respectfully moves this Court to dismiss the above styled cause upon the following grounds.

1. That it appears upon the face of the Bill that this suit does not involve a dispute or controversy within the jurisdiction of this Court, because the amount in controversy does not exceed the sum of $3000.00, exclusive of interest and costs; it appearing upon the face of the Bill that the only matter in controversy, is the effect and enforcement of that certain Judgment of Ouster in the State Courts of Florida, and which Judg-

ment of Ouster presents no particular jurisdictional amount of controversy.

2. It appears upon the face of the Bill of Complaint that the plaintiff has a full and complete adequate remedy at law; the Bill failing to show any exhaustion on the part of the plaintiff, of its remedies at law, and particularly, the Bill fails to show and allege any supplemental proceedings.

3. The Bill of Complaint shows upon its face that it is a proceeding to enjoin the enforcement and effect of a State Court Judgment, which relief this Court has no jurisdiction to entertain, in the premises.

4. It appears from the face of the Bill that defendants, Town of North Miami and also the defendants who are the officials of said Town, are not
47 antagonistic to the plaintiff, and should be aligned upon the same side of the controversy as the plaintiff, which would deprive this Court of jurisdiction.

5. There is no equity in the Bill of Complaint.

Dated February 11, 1935.

HENRY K. GIBSON,
Attorney for the Normandy Beach Development Company.

On the 13th day of February, A. D. 1935, Order was entered, enlarging time for the filing of pleadings of the Defendant, Ocean Beach Heights, Inc., to and including February 22, 1935; and, on February 13, 1935, said Order was filed in the Clerk's office and recorded in Equity Order Book 3, at Page 548.

On the 21st day of February, A. D. 1935, the defendant, Ocean Beach Heights, Inc., a corporation, filed its Motion To Dismiss, in the words and figures following, to-wit:

THE MOTION OF THE DEFENDANT, OCEAN BEACH HEIGHTS, INC., TO DISMISS THE BILL OF COMPLAINT.

(Title Omitted.)

The defendant, Ocean Beach Heights, Inc., a corporation, moves the Court to dismiss the bill of complaint, as to said defendant, because:

48 1. The said bill affirmatively shows that the plaintiff is not entitled to any equitable relief against this defendant.

2. It affirmatively appears from the allegations of the said bill that the plaintiff is not entitled to any injunctive relief against this defendant.

3. It affirmatively appears from the allegations of the said bill that the defendant municipal corporation has never possessed the power of taxation over the lands and property of this defendant, as adjudicated by the highest Court of the State of Florida in its decision interpreting the laws of the said State under which said municipality was created.

4. It does not appear from the allegations of the said bill that there has been any impairment of the obligations of the contracts of the plaintiff with the said defendant municipality.

5. The said bill seeks to deny to this defendant its lawful remedies, by due process of law, for the protection of its property rights.

6. The said bill is multifarious.

LOFTIN, STOKES &
CALKINS,
By JNO. P. STOKES,
J. JULIEN SOUTHERLAND,
Solicitors for the Defendant,
Ocean Beach Heights, Inc.

On the 25th day of April, A. D. 1935, Order was entered, Denying Motions for Dismissal, and said Order was, on April 26, 1935, filed in the Clerk's office and recorded in Equity Order Book 3, at Page 584, in the words and figures following, to-wit:

ORDER DENYING MOTIONS FOR DISMISSAL.

49 (Title Omitted.)

This cause coming on to be heard upon the motions to dismiss filed by the defendants, Ocean Beach Heights, Inc., Normandy Beach Development Company, Lucille F. Ensign and her husband, Walter C. Ensign, and Tatum's Ocean Park Company, and the Court having heard argument of counsel and considered the same and being fully advised in the premises,

It Is Ordered And Adjudged that the said motions to dismiss be and the same are hereby denied.

It Is Further Ordered And Adjudged that the above defendants have ten days from the date of this order

in which to answer or file such other pleadings as they may be advised.

Done And Ordered, at Miami, Florida, this 25th day of April, A. D. 1935.

HALSTED L. RITTER,
Judge.

On the 26th day of April, A. D. 1935, Opinion Of The Court was filed, in the words and figures following, to-wit:

OPINION OF THE COURT.

(Title Omitted.)

RITTER, District Judge:

This matter comes on to be heard upon the motion to dismiss the petition filed by the Ocean Beach Heights, Inc., Normandy Beach Development
50 Company, Lucille F. Ensign and her husband, Walter C. Ensign, and Tatum's Ocean Park Company.

The bill is brought in aid of a mandamus writ issued by this Court in the case of United States ex rel Brown-Crummer Investment Company versus Town of North Miami and her officials, demanding a levy to be made upon the lands within the limits of the Town of North Miami to pay a judgment theretofore obtained by the Brown-Crummer Investment Company upon public improvement bonds of the said Town, which were issued on March 1st, 1928.

In that case, the Town of North Miami and its officials were the only parties respondent. The bill in

that case set up as a ground for the writ of mandamus that the respondents were refusing to levy a tax on the lands within the Town and particularly those located East of Biscayne Bay, because of a decree of ouster of the State Court directed to the Town and its officials from exercising the franchises and privileges of a municipality over the lands East of Biscayne Bay, which State decree was in accord with a decision of the Supreme Court in Mahood, et al., vs. State ex rel Davis, et al., 101 Fla. 1259, 133 So. 90.

The respondents in that case made answer that they were ready and willing to make a levy and collect the fund for the payment of the judgment in question, admitting, "that such judgment prohibits them from levying and collecting taxes against the property described in said writ for the payment of the judgment of the Petitioner or for the payment of other obligations of other creditors of the defendant, Town of North Miami," and they admit "that such judgment does impair the obligation of the contract contained in the bonds upon which the judgment of Petitioner was based, contrary to Section 10, Article 1, of the Constitution of the United States and Section 17 of the Bill of Rights of the Constitution of the State of Florida, and that such judgment impairs the security which was pledged for the payment of said bonds, and that such judgment will deprive Petitioner and other creditors of defendant, Town of North Miami, of their property without due process of law," and the respondents in that case, further in their answer, state—

51 "the greater portion of the property owners owning land East of Biscayne Bay have declined and refused to pay any taxes levied against said property during the greater part of the Town's existence, and particularly since the institution of said Quo Warranto proceeding nearly three years ago, . . . they were able to collect but little more than the necessary funds for the current operating expenses of said

Town; that since the entry of the final judgment of ouster above referred to, the property legally remaining within the Town is wholly insufficient to bear the necessary burden of taxation to meet the requirements and the payments accruing under the various issues of bonds negotiated by the Town prior to the institution of the said Quo Warranto proceeding in said State Court; that said Town still have outstanding approximately Two Hundred and Eighty Thousand, ($280,000.) Dollars of bonds and matured interest coupons, of which amount approximately $45,000. represents matured bonds and $20,000. represents matured interest coupons; that it is totally impossible for said Town of North Miami to collect sufficient taxes out of the lands in the Town lying West of Biscayne Bay to meet its current operating expenses and make any payments upon its bonded indebtedness above set forth, * * * that if they are required by this Court's writ of mandamus to levy and collect taxes out of the property lying West of Biscayne Bay only, in order to meet the maturing bonds and interest coupons now outstanding against said Town, such levy and assessment would amount to confiscation of properties of its citizens lying West of said Bay and yet would not yield the necessary taxes to meet said maturing obligations."

Certain property owners sought to intervene in that case to set up the decree of ouster from the State Court in the Quo Warranto proceeding and to defend the action on the ground that their property East of Biscayne Bay was immune from assessment for the payment of the judgment and the bonds in question. It being represented to the Court that all questions of law covering the situation might be determined in that case, interveners were allowed to file their intervention answer and the Court considered the merits of the case and decided that a writ of mandamus should issue directing a levy of the taxes upon all the lands within the Town of North Miami

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which were so included at the time of its incorporation and issue of the bonds in question and including the territory East of Biscayne Bay.

The only respondents, the Town of North Miami and its officers, did not appeal, but the interveners did. The Circuit Court of Appeals rendered its decision dismissing the appeal of the interveners because they had no right of intervention and could not be considered in the case, (69 Fed. 2nd, 205).

The status of that case therefore is, that the decision of this Court and the Writ of Mandamus issued, stands unimpeached and are in fact res adjudicata of the question now sought to be raised by the respondents in the instant case upon their motion to dismiss. I held in that case that I could not follow the Mahood case when applying the rights of bondholders to the situation. None of the cases in the State Court involved bondholders' rights, they all involved the question of whether or not the lands East of Biscayne Bay were within the municipality and all follow the Mahood case which held that the lands were not within the limits of the Town.

Bondholders are not bound by that decision. They were not parties to it and are entitled to their day in Court. The rights of bondholders stand upon a different ground than the rights of landowners in reference to the matter under consideration. I refer to my opinion in the mandamus case as setting forth my views of the situation. I have not changed my mind.

Boynton vs. Moffat Tunnel Imp. Dist. 57 Fed. (2d) 772.

Defense counsel have urged the case of Hawks vs. Hamil, 288 U. S. 52, as authority for the proposition that this Court is bound to follow the Mahood decision

of the Florida Supreme Court, but I think it is not applicable because as the Court states, (page 59), "No controversy is here as to the impairment of the obligation of a contract in violation of the restraint of the federal constitution". The instant case does involve that question.

53 The defendants here, furthermore, are not in a position to urge the dismissal of this case on the ground that their property has been excluded by the Mahood decision, because of laches and in fact acquiescence in the bond issue for more than three years, permitting meanwhile, with knowledge, the bonds to be sold to the public upon the representation and belief that back of them stood the property in question for taxation, and because of the fact that some of the proceeds of the sale of these bonds was, in fact, spent for public improvements upon the property in question and accepted by the property owners. Jackson, et ux, vs. McWilliams Dredging Co., decided April 2nd, 1935, Fifth Fed. Circuit Court. It was generally understood and accepted before the time came to pay on these bonds, that they were backed by the obligation on the lands in question. The organization and proceedings of the Town of North Miami, in the issue of these bonds, is a fine example of the boom time psychology and faith of the people in Florida. These bonds were issued in the belief that the Town would become a great place with thousands of inhabitants, stretching all around the Bay of Biscayne, a bridge across the Bay was in fact in the course of construction and property owners were ready to permit any amount of bonds to be sold to the public investors for public improvements, believing that the future increase in population and values would easily pay them out. The great enthusiasm and imagination lead to extravagance which is now startling. When the financial orgy passed and values slumped and taxes became a burden and the time of payment on the bonds arrived, property owners

then attempt to repudiate the payment of these bonds and to extract their properties from under the burden.

If the property East of Biscayne Bay can be whittled away from this Town and other territory possibly by some other proceedings may be likewise extracted, it will readily be seen that there will be little left upon which taxes for these bond payments can be levied and eventually there might remain only the Town Hall, which is untaxable. The answer of the Town in the mandamus suit, states the situation.

54 The bondholders cannot be thus treated. The innocent holders of these bonds had a right to rely upon the conditions represented as existing at the time these bonds were issued, when it was claimed and asserted by everybody that the Town limits included the land now sought to be excluded. (See former opinion). On the faith of that the bonds were bought.

It is a matter of general commercial law that is involved; the rights of contract which cannot be avoided by Judicial construction. The authorities are numerous that the Federal Courts are not bound under the consideration of such law by State decisions, but they exercise their own judgment. By the Quo Warrante proceeding in the State Court, the Town and its officers may be ousted from general jurisdiction over the property East of Biscayne Bay for municipal purposes, but cannot be ousted from the levy and collection of taxes for these bonds, as directed by this Court.

Fetzir vs. Johnson, 15 Fed. (2d) 145.

"The National Constitution forbids the States to pass laws impairing the obligation of contracts. In cases properly brought before us that end can be accomplished, unwarrantably no more by judicial decisions

than by legislation. Were we to yield in cases like this to the authority of the decisions of the Courts of the respective States, we should abdicate the performance of one of the most important duties with which this tribunal is charged and disappoint the wise and salutary policy of the framers of the Constitution in providing for the creation of an independent Federal Judiciary."

Township of Pine Grove vs. Talcott, 19 Wall 666, 86 U. S. Rep;
Stanley County vs. Coler, 190 U. S. 437;
Fulsom vs. Township, 159 U. S. 611;
Burgess vs. Seligman, 107 U. S. 20;
Herron vs. S. P. Co. 283 U. S. 91;

The doctrine of the Federal Courts in cases of this character is expressed in Burbon County vs. Block, 99 U. S. 686—

"We have not overlooked the opinion delivered by the Supreme Court of the State in Lewis vs. Com-
55 missioners. The judgment in the case was not given until after the bonds were issued, and after the rights of the holders thereof had become fixed. We are therefore, at liberty to follow our own convictions of the law. To those expressed by the State Court we cannot assent. They are not in harmony with many rulings of this Court made and respected through a long series of years and they are not such as in our opinion would administer substantial justice if applied to this case."

Clapp v. Otoe County, 104 Fed. 473;
Comanche County vs. Lewis, 133 U. S. 198.

I held in my former opinion in this case that the laws in existence at the time these bonds were executed warranted the inclusion of the territory in ques-

tion as part of the taxing district when these bonds were issued.

Cooleys' Constitutional Limitations, Volume 1, page 598, states—

"It has been held that where a statute authorized a municipal corporation to issue bonds and to exercise the power of legal taxation in order to pay them and persons bought and paid value for bonds issued accordingly, this power of taxation is part of the contract and cannot be withdrawn until the bonds are satisfied; that an attempt to repeal or restrict it by statute, is void, and that unless the corporation imposes and collects the taxes in all respects as if the subsequent statute had not been passed, it will be compelled to do so by mandamus."

A State judicial decision can no more impair the contract in question then can a legislative act.

Mobile vs. Watson, 116 U. S. 289;
Humphrey vs. State, 108 Fla. 92, 145 So. 858;

Town of Perry vs. Sampson, 17 Fed. (2d) 1, 5th Circuit.

The fact that the bonds have been reduced to judgment does not alter plaintiff's rights. The judgment carries with it all rights which attached to the original bonds and coupons.

Ralls County vs. United States, 105 U. S. 733,
United States vs. Knox County, 122 U. S. 56 306,
State vs. Livingston, 103 Fla. 841, 139 So. 364.

This injunction suit is in aid of the mandamus heretofore issued. The petition sets up a condition, which,

if proven, must be unblocked to make this Court's decree effective.

The motion to dismiss is denied.

Dated, at Miami, Florida, this 25th day of April, A. D. 1935.

HALSTED L. RITTER,
Judge.

On the 4th day of May, A. D. 1935, Answer Of Ocean Beach Heights, Inc., was filed, in the words and figures following, to-wit:

THE ANSWER OF THE DEFENDANT, OCEAN BEACH HEIGHTS, INC., TO THE BILL OF COMPLAINT.

(Title Omitted.)

Answering the bill of complaint herein, and each paragraph thereof as numbered therein, the defendants, Ocean Beach Heights, Inc., a Florida Corporation, says that:

1. It admits the allegations, contained in Paragraph I.

2. It admits that the town, formerly called Miami Shores and now called North Miami, is a purported municipal corporation attempted to be organized in 1926, and which the plaintiff claims exists under and by virtue of Sections 1825 to 1828, inclusive, of the Revised General Statutes of Florida of 1920; also that the name of the said purported town as originally
57 attempted to be incorporated has been changed to the Town of North Miami by a purported

special act of the Legislature of the State of Florida, purported to have been enacted at the Extraordinary Session of 1931, and that such special act has been designated Chapter 15823; also that, after the purported organization of the said town, the said town assumed and claimed to have exercised all the functions and powers attempted to be confided to properly organized towns by virtue of the laws above mentioned, including the exercise of police power, supervision of health, providing for the collection of garbage, elimination of mosquitoes, etc., in the territory West of Bay Biscayne, hereinafter described, but this defendant denies that the said town has assumed and exercised said municipal functions in the territory East of Bay Biscayne, hereinafter described.

3. It admits each and every the allegations contained in Paragraph III.

4. It admits that the plaintiff instituted a suit in the above entitled Court on September 8, 1930, upon certain obligations of the said town as alleged in Paragraph IV; that a final judgment was rendered in said action, which was recorded, as alleged in said Paragraph IV; that the time for appeal has expired, and that no part of it has been paid, as alleged in Paragraph IV; that the plaintiff is the owner and holder of bonds and coupons, as alleged in the said Paragraph IV; but it is without knowledge as to whether the said town has no property subject to execution and no means of raising funds to pay such judgment other than by the exercise of the power of taxation; it admits that Section 1903 of the Revised General Statutes of 1920 is as quoted in said Paragraph IV.

5. It admits that, by the terms of said bonds and said statute authorizing the issuance of same, said town pledged its full faith and credit for the payment of same and to levy a tax upon all taxable property in said

town for the payment of the same, but this defendant is without knowledge as to whether that is the sole security for the payment of the said bonds. It denies, however, that the said town pledged itself to
58 levy taxes on this defendant's lands lying East of Biscayne Bay to pay the plaintiff's bonds, and denies that said bonds and said statute contemplate that taxes shall be levied against this defendant's said lands to pay said bonds, for the reason that the said lands have never been in the said town. It admits that, by virtue of the said statute, it became and was the duty of the town officials to levy sufficient tax and assessment upon all real and personal property within the town, but not as the town was attempted to be defined at the time of its organization, for the reason that all the lands lying East of Biscayne Bay, including this defendant's lands, were never in the said town, and there did not exist any authority in law for the attempted inclusion of said lands in the said town, and said lands are not now, and never have been, in said town, nor subject to taxation for the payment of the plaintiff's said judgment, bonds and coupons.

6. It is without knowledge as to whether any proceeds derived from the sale of the said bonds, hereinbefore mentioned, were expended by the said town in the construction of public improvements which became a part of the permanent assets of the said town, but this defendant admits that, if any such proceeds were invested in public improvements by the said town and said improvements are of a governmental character, they are assets that are exempt from levy and sale under execution against the said town. This defendant denies that the so-called benefits or the so-called improvements are now, or ever have been, available to this defendant, because the lands of this defendant lie East of Biscayne Bay, and are not now, and never have been, within the corporate boundaries of the said town.

This defendant denies that any proceeds of the said bonds were expended on improvements for the benefit of this defendant's lands, or in the neighborhood of this defendant's lands, or that this defendant's lands got the benefit of any of said improvements.

7. This defendant admits that, while it, or its predecessor in title, did not, at the time of the organization of the said town, make any objection to the organization of the said town, this defendant avers
59 that neither it nor its predecessor in title ever consented to the inclusion of its lands, lying East of Biscayne Bay, in the said town. This defendant, on its own behalf and on behalf of its predecessor in title, denies that either it, or its predecessor in title, ever affirmatively, or otherwise, consented to the inclusion of this defendant's lands, lying East of Biscayne Bay, in the said town. This defendant denies that it advertised in any newspaper that its property had been included in the said town, and it avers that it is without knowledge as to whether its predecessor in title has ever done so or not. This defendant admits that it did not file any objections to the purported incorporation of said properties within the said town, nor institute any legal proceedings to prevent the purported incorporation of its property within the said town or to have the same excluded; it admits that the quo warranto proceedings were instituted on August 12, 1929, as hereinafter set forth. It admits that, after the bonds had been authorized by the city officials of said town, a proceeding was filed in the Circuit Court of Dade County for the validation of said bonds and that a final decree was made and entered by said Circuit Court in accordance with the requirements of statute. It admits that, at the time of said validation, no objections were made by this defendant thereto nor did this defendant file any proceedings to restrain the issuance of said bonds or to attack the validity of same, and that said proceedings gave full notice that the said

town, by the terms of said bonds, intended to pledge its full faith and credit for the payment of the same, and that no appeal was taken by this defendant from said decree of validation, and this defendant did not object to the sale of the said bonds or to the expenditure of the proceeds derived from the sale of the construction of public improvements within said town.

8. It admits that, on August 12, 1929, the quo warranto proceeding was filed in the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, in the manner and by the parties named in said Paragraph VIII, against the said town and its officials, and for the purposes alleged in said Paragraph VIII, and that the property described in
60 the Information upon which the Writ was issued is located East of Biscayne Bay, and is described in the bill of complaint, and includes the property of this defendant, and that this defendant's lands were attempted to be included within the corporate limits of the said town when the bonds described in the bill of complaint and upon which judgment was obtained were issued. It admits that neither the plaintiff nor any other holder of bonds or coupons were made parties to said suit, nor intervened therein.

It admits that a final judgment was entered in said quo warranto proceeding, the effect of which was to oust and prohibit the said town and its officials from exercising the offices, franchises and privileges of a municipality over the lands of this defendant and the lands of other defendants, East of Biscayne Bay. It admits that, upon appeal to the Supreme Court of Florida, said judgment of ouster was reversed and remanded to the Circuit Court with directions that further proceedings be had in said cause not inconsistent with the opinion of said Supreme Court, and that said cause was again tried in the Circuit Court and a final judgment of ouster was entered, and that

the said town appealed from said judgment and that said appeal was dismissed and that said judgment has become final. It avers that said judgment, in its finality, not only ousted, prohibited and excluded said town and its officials from exercising jurisdiction and powers over this defendant's lands, and other lands East of Biscayne Bay, but also adjudicated that the said lands never were in the said town, and that their attempted inclusion therein was illegal, void and without authority of law, and this defendant avers that, because of said adjudication, there never has been any necessity for said lands to be excluded from said town, for the reason that they never have been in the said town.

9. It admits each and every the allegations in Paragraph IX, except that it avers that the rights of the plaintiff do not now, and never have, included any rights to have the lands of this defendant subjected to any jurisdiction of the said town, for the purposes of taxation or otherwise, and except that it is without knowledge concerning when and how the
61 plaintiff learned of the suit and the appeal mentioned in said Paragraph IX.

10. It admits each and every the allegations in Paragraph X, except that it denies that its lands are now, or ever have been, subject to assessment for taxation by the said town.

12. It admits each and every the allegations in Paragraph XII, except that it is without knowledge as to whether the said town will continue to allow additional interest and principal on the plaintiff's bonds to mature and go unpaid.

13. It admits that the said town prepared its budget for the year 1932, and included in said budget a levy of 19 mills against the property East of Bay Biscayne,

said levy being made to pay the proportionate part of the bonded debt and expenses of collecting the same, but it denies that the levies of 19 mills in 1932 and 16 mills in 1933 were made pursuant to the said Peremptory Writ, and avers that such levies were voluntary and without authority of law, and were grossly in excess of the amount necessary for debt service; this defendant denies that the effect of the State Court's judgment of ouster operated to exclude the lands East of Biscayne Bay from the said town, and, on the contrary, avers that the said judgment of ouster operated to exclude the town and its officials from exercising any jurisdiction or powers over the said lands, because the attempt of the said town and its officials to include the said lands within the boundaries of the said town, at the time of its organization, was void from the very beginning, and the said lands never were, and are not now, within the boundaries of the said town for any purpose whatsoever.

This defendant admits that the officials of the said town are ready and willing to continue to levy and collect taxes against the property East of Biscayne Bay to pay any part of the judgment held by the plaintiff, but this defendant denies that the said town and its officials have any power or authority to assess, levy or collect any taxes against the said lands.

This defendant admits that, if a suit be brought to enforce the collection of such taxes, the judgment of ouster would be a complete defense to any
62 action brought by the said town, as alleged in the bill of complaint, and this defendant admits that the injunction already obtained in the State Court, as alleged in the bill of complaint, by some of the defendants, restrains the issuance of tax deeds based upon tax certificates and declares the taxes already purported to be pledged by the town against property East of Biscayne Bay to be void and also

prevents the said town from enforcing the collection of taxes attempted to be heretofore levied on said property by said town.

It denies that, if the owners of property East of Biscayne Bay be permitted to utilize the judgment of ouster and the injunction obtained in the State Courts, as alleged in the bill of complaint, it would be impossible for the plaintiff and other bondholders to realize sufficient sums out of the remaining properties within the boundaries of the said town to pay the amounts due them.

It admits that this defendant has been demanding and will continue to demand of the Clerk of the Circuit Court of Dade County, Florida, that he cancel all tax certificates held by him against its property, on the ground that the same are void under the decisions of the Supreme Court of Florida, holding that its lands never were in the limits of the said town from the time of its organization, and this defendant admits that it will bring actions to compel the said Clerk of the Circuit Court to cancel the said void tax certificates whenever necessary.

It denies that the plaintiff and other bondholders of the said town are without remedy at law to protect and enforce whatever rights they may have, and it denies that the plaintiff and other bondholders of the said town have any rights whatsoever, by virtue of the Statutes of the State of Florida or otherwise, in the lands of this defendant and in the other lands East of Biscayne Bay; and this defendant avers that, by force of the Statutes of the State of Florida as construed by the highest Court of the said State, the plaintiff and other bondholders of the said town have no such rights, as alleged in the bill of complaint, against the lands of this defendant and other lands East of Bis-

cayne Bay; and it denies that the plaintiff
63 and other bondholders of the said town are entitled to any rights in the lands of this defendant and in the other lands East of Biscayne Bay, by virtue of any provision in the said bonds or by virtue of any decision of this Court, or otherwise.

It denies that the enforcement of the judgment of ouster of the State Court and the injunctions of the State Courts would destroy the value of the plaintiff's judgment and bonds by taking away more than 60% of the security which was originally attempted to be pledged for the payment of the same, but, on the contrary, this defendant avers that its lands and other lands East of Biscayne Bay have never been any part of the security for the payment of said judgment and said bonds, and that the attempt by the said town and its officials to pledge the said lands for the payment of the said judgment and the said bonds was without authority of law and was wholly null and void.

It denies that the enforcement of the said judgment of ouster and the said injunctions would impair any contractual obligations between the said town and the plaintiff and other bondholders; but, on the contrary, this defendant says that to subject its lands and the other lands East of Biscayne Bay to taxation by the said town and its officials, for any purpose whatsoever, would amount to the taking of this defendant's lands, and the other lands East of Biscayne Bay, without due process of law, since the power granted by the Legislature of the State of Florida, by the statutes under which the said town was organized, and as unequivocally interpreted by the highest Court of the State of Florida, never existed in the said town and its officials to the extent of warranting the inclusion in the boundaries of the said town the said lands East of Biscayne Bay, which are not, and never were, contiguous or reasonably near the community center of the said town as organized.

14. It admits that, on November 15, 1932, the plaintiff filed a bill for an injunction in this Court, as alleged in the bill of complaint herein, but this defendant avers that the said bill was voluntarily withdrawn at the suggestion of the Court, because it was manifestly filed prematurely and that there was no litigation pending in the State Court at that
64 time and because the said bill was without merit; it denies that either it or its counsel ever entered into any stipulation whatever in open Court or elsewhere not to apply for an injunction or to otherwise assert its property rights; it admits that it did join in the case of S. M. Tatum, Inc., vs. Leatherman, as Clerk, and the said Town, and that a permanent injunction was issued in said cause, as alleged in the bill of complaint herein, and that an appeal was taken to the Supreme Court of Florida by the said town, and the decree of the Lower Court granting said permanent injunction was affirmed by said Supreme Court, and that a petition for a rehearing was subsequently denied.

It admits that it is demanding, and will continue to demand, of the Clerk of the Circuit Court of Dade County, Florida, the cancellation of any tax certificates issued by said purported Town of Miami Shores (now North Miami), against its property, and that it will enforce such demand by legal action, if necessary.

It denies that the plaintiff has relied, or had any reason to rely, on any alleged oral stipulation, as alleged in the bill of complaint herein, and this defendant avers that it or its counsel never were a party to any such stipulation.

It denies that it should be estopped from availing itself of any remedies it may have for the protection of its property rights as ascertained by the highest Court of the State of Florida in interpreting Florida Statutes;

and it denies that it is estopped by reason of any attempted intervention in the mandamus suit, as alleged in the bill of complaint herein, and it avers that it was denied, by the Circuit Court of Appeals, the right to intervene in said mandamus proceeding and was denied the right to set up any defense therein and was denied the right to appeal from the judgment therein; and it further avers that throughout the said mandamus proceeding, in the District Court and in the Circuit Court of Appeals, the plaintiff herein has contended that this defendant and other owners of lands East of Biscayne Bay were not entitled to intervene in said mandamus proceeding, and that the plaintiff
65 is now attempting to take advantage of a situation brought about by its own action.

15. It denies that the judgments described in Paragraph VIII of the bill of complaint are void as to the rights of the plaintiff or anyone else, for any purpose whatsoever, and it denies that the said judgment of ouster will impair the contract made by said town and the plaintiff and other bondholders, in any manner whatsoever; and this defendant avers that the said judgment of ouster, being nothing more than a judicial decision, does not come within the protection of the Federal or the State Constitutions prohibiting the passage of laws that would impair the obligations of contracts.

It is without knowledge as to whether the said judgment of ouster has delayed the said town in the payment of its obligations, and it denies that the said judgment of ouster will delay and injure the plaintiff. It denies that the operation of the said judgment of ouster will injure the plaintiff and diminish the value of the contracts held by the plaintiff and other bondholders, so far as their rights extend under said contracts; and it avers that its lands and other lands East of Biscayne Bay never were within the power of the

said town and its officials to pledge as security for any purpose whatsoever.

It denies that the enforcement of the said judgment of ouster and the said injunctions, alleged in the bill of complaint herein, will deprive the plaintiff and other bondholders of their property and property rights without due process of law; and, on the contrary, this defendant avers that any interference by this Court with the operation of the said judgment of ouster and this defendant's remedies thereunder would be to deprive this defendant, and other owners of lands East of Biscayne Bay, of their property and property rights, without due process of law, and would deny to them the equal protection of the laws, in violation of the Constitution of the United States.

It admits that the plaintiff and other bondholders of the said town were not parties to the pro-
66 ceeding in which the said judgment of ouster was entered, and in which the injunction was issued, in Alta Cliff Co., et al., vs. Leatherman, Clerk, but this defendant avers that the decisions of the highest Court of the State of Florida in said cases are judicial precedents that are binding on the Federal Court, and that the Federal Court is without authority to grant the relief prayed by the bill of complaint herein.

It denies that it has derived any benefits from any public improvements constructed with the proceeds of the bonds, as alleged in the bill of complaint herein, or otherwise, by virtue of any action of the said town; and it denies that the said town and its officials ever had any power or authority to use the credit of this defendant's property and other property East of Biscayne Bay for the purpose of making public improvements or otherwise.

It admits that the operation of the said judgment of ouster would prevent the said town from levying and collecting taxes, for the payment of the plaintiff's judgment and the bonds and coupons, from the properties of this defendant and the properties of other owners East of Biscayne Bay.

It is without knowledge as to whether the property that was legally within the said town, at the time of its organization, would be wholly insufficient to enable the said town to pay said bonded debt by the levy of taxes or otherwise, and that it would work such a hardship upon the individual property owners within the said town for this Court to recognize the law as it has been established by the Supreme Court of Florida, and that taxes would not be paid and that taxes would be so great as to be uncollectible and payment to the plaintiff and other bondholders would be indefinitely delayed.

It denies that the enforcement of the said judgment of ouster and injunction decrees of the Supreme Court of Florida, as alleged in the bill of complaint herein, would be contrary to all recognized principles of equity and standards of good conscience by reason
67 of the facts alleged in the bill of complaint, or otherwise.

It denies that the plaintiff has now, or ever has had, any vested rights in taxes purported to have already been levied by said town against the lands of this defendant and other lands East of Biscayne Bay; and it avers that any such purported tax levy is null and void, constitutes no lien on said properties East of Biscayne Bay, and is without any legal basis for enforcement.

16. It admits that it is demanding, and will hereafter demand, the cancellation of all outstanding tax certificates issued against its lands by the said town,

and that the basis for such cancellation are the authorities alleged in the bill of complaint, but it denies that the cancellation of such tax certificates is of such damage to the plaintiff as can be relieved by this Court.

17. It admits each and every the allegations contained in Paragraph XVII.

18. This defendant denies that it, or its predecessor in title, ever consented to the validity of the incorporation of the said town, and this defendant denies that it is now, or ever has been, estopped from attacking the validity of the incorporation of the said town.

This defendant admits that it will continue to question and seek to enjoin the collection of taxes levied by the said town on its lands, or the issuance of tax deeds upon tax certificates issued pursuant to any purported sale by the said town of this defendant's lands for such taxation, and that it will, if necessary, institute further litigation to protect its property rights, but this defendant denies that the plaintiff is entitled to the issuance of an injunctive order against this defendant restraining it from protecting its property rights in any manner afforded by law; and this defendant avers that the issuance of such an injunctive order would deprive this defendant, and other owners of lands East of Biscayne Bay, of their property without due process of law, and would deny to them the equal protection of the laws, for the reason that the said town, at the time of its organization, included within its boundaries, contrary to the Statutes of the State of Florida under which the said town was organized, the lands of this defendant and other lands East of Biscayne Bay which were neither contiguous to nor properly connected with the community center of the said town; and this defendant denies that the denial of such an injunctive order would diminish and depreciate the value of the plaintiff's contracts, but

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avers that the value of the plaintiff's said contracts is the same as it ever legally was, from the time the said contracts were entered into between the said town and the said plaintiff.

It denies that the plaintiff and any other bondholders are without an adequate remedy at law; and this defendant denies that the remedy of the plaintiff and other bondholders is by any injunctive relief against this defendant that could be granted by this Court, for the reason that the decisions and decrees of the State Courts interpreting the laws of the State, under which the said town was organized, are judicial precedents binding on the Federal Court.

This defendant denies that the plaintiff has exhausted its remedies at law, and, on the contrary, avers that the plaintiff has an adequate remedy by mandamus to compel the said town and its officials to levy a sufficient tax upon the properties legally within the said town for the payment of the obligations held by the plaintiff.

This defendant denies that any injustice will be done to the plaintiff or other bondholders if they are not made parties to injunction or other proceedings in the State Courts brought by this defendant and other owners of property East of Biscayne Bay for the protection of their property rights, and this defendant avers that the said plaintiff and other bondholders are not necesary parties to said litigation, and this defendant avers that the plaintiff and other bondholders have not themselves sought leave to intervene in any of such litigation in the State Courts.

This defendant denies that this Court has any jurisdiction to grant an injunction in this cause,
69 to restrain the operation of the judgment of ouster of the State Court, for the reason that

the State Court first obtained jurisdiction of the res involved herein, and for the additional reason that, eevn if the Federal Court should take jurisdiction of this suit, it is bound by the decisions of the State Supreme Court interpreting the State Laws under which the said town was organized.

This defendant denies that the plaintiff is entitled to any injunction, as prayed in the bill of complaint herein, against this defendant or any other owners of property East of Biscayne Bay, for the reason that, as held by the United States Circuit Court of Appeals in Normandy Beach Development Co., et al., vs. United States, ex rel., Brown Crummer Investment Co., 69 Fed. (2d) 105, the Peremptory Writ of Mandamus granted by this Court is not binding on this defendant and such other property owners, and for the additional reason that the granting of such an injunction would tend to interfere with the operation of the judgment of ouster of the State Court.

This defendant denies that the plaintiff is entitled to an injunction, as prayed in the bill of complaint herein, against the said town and its officials, for the reason that the plaintiff has alleged in its bill herein that the said town officials are ready and willing to perform their legal duties with respect to the levying and collecting of taxes against lands within the said town, and for the additional reason that an injunction against the said town and its officials restraining them from refusing to levy and collect taxes with respect to the lands of this defendant and other owners of property East of Biscayne Bay, described in the said judgment of ouster, would directly interfere with the operation of the said judgment of ouster.

This defendant denies that the plaintiff is entitled to an injunction, as prayed in the bill of complaint herein, against the Clerk of the Circuit Court of Dade

County, Florida, for the reason that such an injunction would directly interfere with the operation of the said judgment of ouster.

70 19. Further answering the said bill of complaint herein, this defendant avers that, at the time of the organization of the said town, and now, the said lands East of Biscayne Bay were then, and are now, far removed and isolated from the community of the said town; that the said lands East of Biscayne Bay are separated from the community by the waters of Biscayne Bay, a large and navigable body of water; that, at the time of the organization of the said town, and now, there is no bridge or causeway connecting the said lands with the community center of the said town, and there are no means of travel from the community to the said lands, except by going through the City of Miami and the City of Miami Beach or through the Town of Fulford, now North Miami Beach, and that, by going by any of these routes, it is approximately 10 miles from the town hall and center of said community to the said lands; that the said lands, at the time of the organization of the said town, and now, is mostly rural, wild and unimproved, covered with thick and heavy growth of seagrape vine, palmettoes, shrubs, bushes, scrub pine trees and other growths incident to lands lying near or contiguous to the Atlantic Ocean; that a small portion of said lands has been, by the owners thereof, subdivided into lots and blocks, but most of these are unoccupied.

A map of the said town, according to the purported boundaries attempted to be established at the time of the organization of the said town, showing the relative position and situation of the said lands East of Biscayne Bay and the community center of said town, is hereto annexed, marked "Ocean Beach Heights Exhibit A," and made a part of this Answer, with like effect as though herein exhibited.

20. Further answering the said bill of complaint, this defendant avers that, at the time of the organization of the said town, there were not more than 10 registered voters living on said lands East of Biscayne Bay, although in the community of the said town, West of Biscayne Bay, there were approximately 300 voters; that the registered voters of the said town who voted to incorporate the said town, as aforesaid, were all residents on the lands West of Biscayne Bay, and, in describing the boundaries of the said town, attempted to incorporate approximately 16 square miles of land; that, while such an area is known to exist in the cities of Jacksonville, Miami, Tampa and other large metropolitan centers, the relative population of the said Town of North Miami and such large cities is beyond comparison with respect to the extent of the boundaries thereof.

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That the said town made no improvements whatever on the lands East of Biscayne Bay or any portion thereof, by way of building streets, sidewalks or roads, or the laying out or grading or hard surfacing of any streets or roads; that no sewers have been laid or water mains placed; that no improvements whatever have been made or even in contemplation by the said town within the lands East of Biscayne Bay; that no benefits whatsoever have accrued to said lands East of Biscayne Bay, or to any of the owners of said lands, by reason of any action by the said town or its officials.

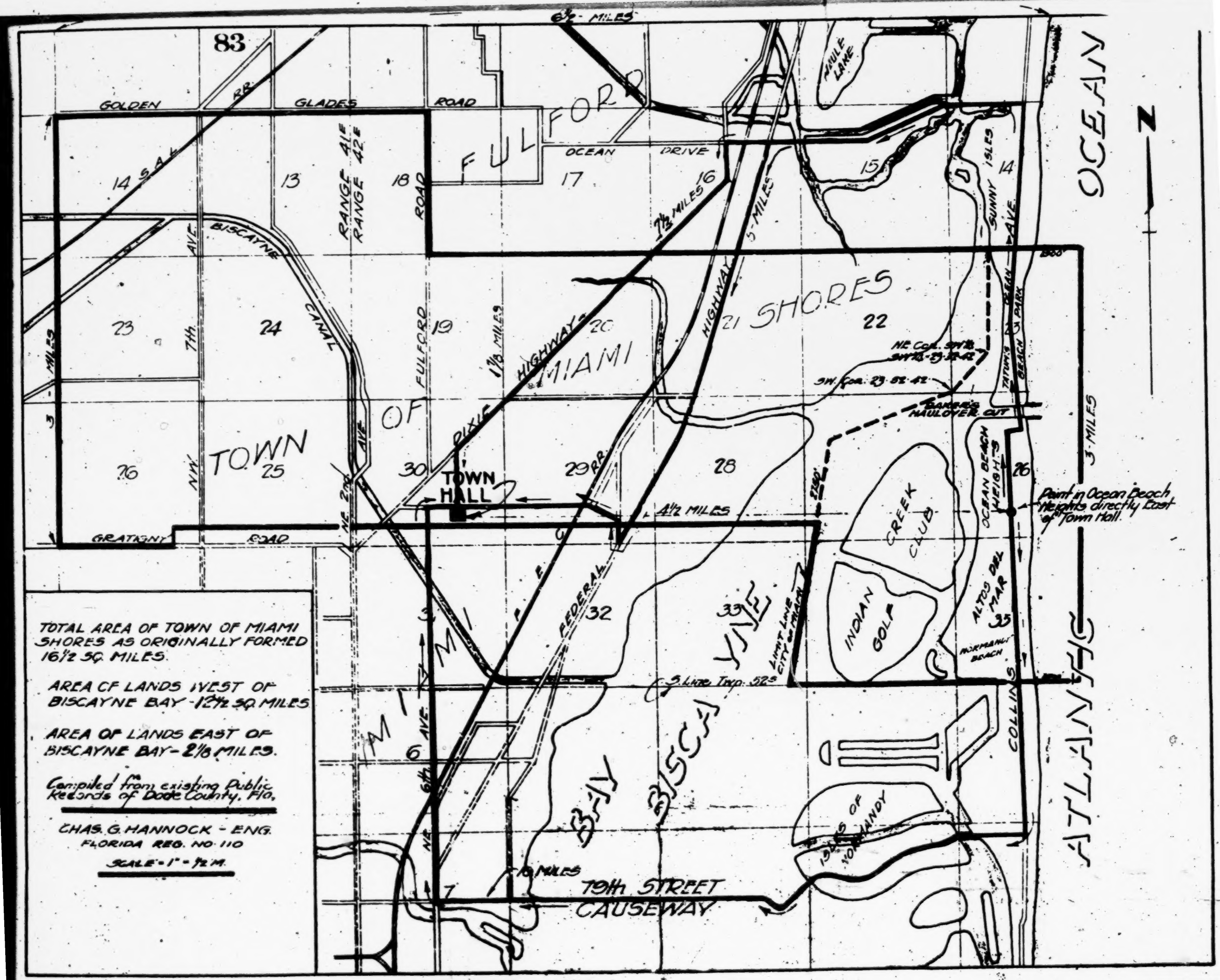
That this defendant has always objected and refused to pay taxes levied by the said town and to recognize the existence of said town, and it does not own any lands within the legal limits of the said town; that the lands of this defendant and other lands East of Biscayne Bay are too remotely located from the portion of the said town that is built up, and which is West of Biscayne Bay, to receive any benefits there-

from; that the only purpose of the attempted inclusion of said lands within the boundaries of the said town was to use the said lands and taxes therefrom for the support of the town government and to pay off the indebtedness created for the sole benefit of the business and residential district of the said town, located West of Biscayne Bay.

And this defendant avers all the matters and things set forth in the Information in the nature of Quo Warranto, filed in the Circuit Court of Dade County, Florida, in the suit of the State of Florida ex rel. Fred H. Davis, Attorney General, vs. Mahood, et al., referred to in the Bill of Complaint herein; a copy of which Information is hereto annexed marked
72 "Ocean Beach Heights Exhibit B," and made a part of this Answer, with like effect as though herein set out at length.

J. JULIEN SOUTHERLAND,
JNO. P. STOKES,
For LOFTIN, STOKES & CALKINS,
Solicitors for Ocean Beach Heights, Inc.

"OCEAN BEACH HEIGHTS EXHIBIT A," attached to the foregoing Answer is a map, of which the following is a photostatic copy.



TOTAL AREA OF TOWN OF MIAMI SHORES AS ORIGINALLY FORMED 16½ SQ. MILES.

AREA OF LANDS WEST OF BISCAYNE BAY - 12½ SQ MILES.

AREA OF LANDS EAST OF BISCAYNE BAY - 2⅛ MILES.

Compiled from existing Public Records of Dade County, Fla.

CHAS. G. HANNOCK - ENG.
FLORIDA REG. NO. 110
SCALE - 1" - ½ M.

"OCEAN BEACH HEIGHTS SURVEY A"

74 "OCEAN BEACH HEIGHTS EXHIBIT B", attached to the foregoing Answer is in words and figures following, to-wit:

In the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County.

State of Florida, ex rel, Fred H. Davis, Attorney General, Relator, North Island Investment Company, a corporation, Indian Creek Golf Club, a corporation, The Normandy Beach Development Company, a corporation, Lucille F. Ensign, joined by her husband, Walter C. Ensign, Co-relators,

vs.

L. H. Harrington, Louis Nathan, H. Goodrich, John A. Mahood, William Bennett, Jack Bettles, John V. Shellhorse, H. H. Hawthorne, C. A. McDonald, and Town Of Miami Shores, a pretended municipal corporation, Respondents.

Quo Warranto—Information.

Fred H. Davis, Attorney General of the State of Florida, who sues for the people of said State in this behalf as relator, and North Island Investment Company, a Florida corporation, Indian Creek Golf Club, a Florida corporation, The Normandy Beach Development Company, a corporation organized and existing under the laws of the State of Ohio, duly authorized to do business in the State of Florida, and with its principal place of business in Dade County,
75 Florida, Lucille F. Ensign, joined by her husband, Walter C. Ensign, both residents of Dade County, Florida, co-relators, comes into Court on this day in said State, in the name and by the authority thereof gives the Court here to understand and be informed that L. H. Harrington, Louis Nathan, H. Goodrich, John A. Mahood, William Bennett, Jack Bettles, John V. Shellhorse, H. H. Hawthorne, C. A.

McDonald have for the space of two years and more last past usurped and do usurp to be a municipal corporation under the name of Town of Miami Shores in Dade County, Florida; and that they claim to be the Mayor, Councilmen, City Clerk, Tax Assessor, Tax Collector and Town Marshal of said pretended town, and as such, do perform and exercise all the liberties, privileges and franchises of an incorporated town, usurping to be a municipal corporation, to the prejudice and wrong of the people of the State of Florida; and the relators further give the Court here to understand and be informed that the said pretended corporation of the Town of Miami Shores has never been organized according to law, and is without legal existence, and that the statutes under which its corporate existence is claimed, are unconstitutional and void, and that the respondents, the persons attempting to hold such offices and enjoying such franchises do so without lawful authority to the prejudice and wrong to the people of the State of Florida and to the co-relators particularly.

The Relators further give the Court here to understand and be informed that the respondents have in the past exercised, and do now exercise the rights of a municipal corporation to the prejudice and wrong to the people of the State of Florida, to the prejudice and wrong to the co-relators in particular, over the following described lands, situate, lying and being in the County of Dade, State of Florida, to-wit:

"Commencing for a point of beginning at the intersection of the high water mark of the Atlantic Ocean with the south boundary line of fractional Section 35 in Township 52 South, Range 42 East, Dade County, Florida, run west along the south boundary of Section 35 and continue along the south line of Section 33 and
34 to the intersection of the eastern boundary
76 of the City of Miami; thence north northeasterly along the said eastern limits of the

City of Miami, produced a distance of 2750 feet; thence in a northeasterly direction to the northeast corner of fractional Section 27, Township 52 South Range 42 East; Thence continue in a northeasterly direction delecting to the left from the last mentioned course to the northeast corner of the southwest one-quarter (SW¼) of the southwest quarter (SW¼) of fractional sectional 23-52-42; thence north along the east line of the west one-half (W½) of the west one-half (W½) of fractional Section 23-52-42 the north boundary of said Section 23; thence east along the said north boundary line of said Section 23 to the intersection of the highwater mark of Atlantic Ocean; thence continue east along the last mentioned course produced a distance of 1500 feet; thence in a southerly direction parallel to and 1500 feet east of the high water meander line of the Atlantic Ocean to the south line of fractional Section 35, Township 52 South, Range 42 East, produced easterly; thence west along the last said line of Section 35 to the point of beginning."

That on the 5th day of February, A. D. 1926, the registered voters of the community of Miami Shores met and attempted to organize the pretended municipal corporation of the Town of Miami Shores under the sections 1825 to 1828 of the Revised General Statutes of 1920 of the State of Florida, a certified copy of the proceedings of the attempted corporation of said pretended Town is attached hereto, marked "Relators Exhibit A", and hereby expressly made a part hereof as fully as if set out herein.

The Relators give the Court here to understand and be informed that the land hereinabove described is the area of land lying east of an approximate center line of Biscayne Bay, a navigable body of water, situate in Dade County, Florida, said area being bounded on the north by the Town of Fulford, on the east by the Atlantic Ocean, and on the South by the City of

Miami Beach, said area comprising all of fractional sections 26 and 35, and a portion of fractional sections 23, 27, 33 and 34, all in Township 52 South, Range 42 East, in Dade County, Florida. Attached hereto marked "Relators Exhibit B", is a map showing the area east of Biscayne Bay, marked in yellow
77 pencil, reference to which is expressly prayed as often as the same may be necessary.

The Relators further give the Court here to understand and be informed that they are the owners of lands situate within said territory, that the land owned by each co-relator is more particularly described as follows:

The North Island Investment Company, a corporation, is the owner in fee simple of the following described lands:

"Government lots One (1) and Four (4) Section 34 Northeast quarter of Northeast quarter Section 34, Government lot Two (2) Section 35, all in Township 52 South, Range 42 East, Dade County, Florida."

The Indian Creek Golf Club, a corporation, is the owner in fee simple of the following described lands:

"Government Lot Two (2) Section 34 Northeast quarter of Northeast quarter Section 34, in Township 52 South, Range 42 East, Dade County, Florida."

The Normandy Beach Development Company, a corporation is the owner of the following described lands, to-wit:

Lots One (1), Two (2) and Four (4) of Block Four A (4A); Lots Two (2), Three (3) and Four (4) of Block Five (5); Lot nineteen (19) of Block Six (6); Lots Two (2) and Sixteen (16) of Block Seven (7);

Lots One (1), Three (3) and Four (4) of Block Eight (8); Lot Eight (8) of Block Ten (10); Lot Eight (8) of Block Eleven (11); Lots Three (3) Five (5) and Six (6) of Block Twelve (12); Lot Four (4) of Block Thirteen (13); Lot Four (4) of Block Fourteen (14); Lots Three (3) Four (4) Five (5) Seven (7) Sixteen (16) and Eighteen (18) of Block Fifteen (15); Lot Ten (10) of Block Sixteen (16); Lots Three (3) Four (4) and Five (5) of Block Eighteen (18); Lots Three (3) Four (4) and Nineteen (19) of Block Nineteen (19); Lot One (1) of Block Twenty (20); Lots One (1) and Eighteen (18) of Block Twenty-two (22); Lots One (1) Two (2) and Three (3) of Block Twenty-three (23); Lots Three (3) Four (4) and Seven (7) of Block Twenty-three A (23A); Lots Twenty-six (26), Twenty-seven (27) and Twenty-eight (28) of Block Twenty-six (26); Lots One (1) Two (2)
78 Three (3) Six (6) Seven (7) Nine (9) Ten (10) Twelve (12) Thirteen (13) Fourteen (14) Fifteen (15) Sixteen (16) Twenty (20) Twenty-one (21) Twenty-two (22) and Twenty-three (23) of Block Twenty-seven (27); Lots Nine (9) Eleven (11) Twelve (12) and Thirteen (13) of Block Twenty-eight (28); Lots Sixteen (16) Nineteen (19) Twenty-one (21); Twenty-two (22) and Twenty-four (24) of Block Twenty-eight A (28A); and Lot Three (3) of Block Twenty-nine (29) of Normandy Beach, recorded in Plat Book 16, page 44.

Lucille F. Ensign is the owner of the following described land:

Lot Two (2) of Block Twenty-nine (29) of Normandy Beach.

All of which above described lands are situate, lying and being within the territory hereinabove first described.

The relators further give the Court here to understand and be informed that the said act of the registered voters of the pretended Town of Miami Shores in attempting to incorporate said territory lying east of Biscayne Bay as hereinabove described was unlawful and void, and that the said pretended Town has never incorporated said territory within its pretended Town Limits, for the reason that the territory hereinabove first described is not a part of the community of Miami Shores but it far removed and isolated from the community; that the said territory is separated from the community by Biscayne Bay, a large and navigable body of water; that there is no bridge or causeway connecting the territory hereinabove first described with the community of Miami Shores, and that there are no means of travel from the community to the territory hereinabove first described except by going through the City of Miami and Miami Beach or through the Town of Fulford, and by going either way it is approximately ten miles from the town hall and center of said community to the said territory hereinabove described; that said territory in most instances is rural land and is wild and unimproved, covered with a thick and heavy growth of seagrape vine, palmettos, shrubs, bushes, scrub pine trees and other growths incident to lands lying near or contiguous to the Atlantic Ocean; a small portion of the land is subdivided into lots and blocks, although at the present time there are not more than fourteen
79 houses on said land, five of which are not fit for living purposes, and only five of which are now occupied; that there are not more than ten registered voters living on the territory hereinabove described, although in the community of Miami Shores there are approximately three hundred voters; that at the time of the attempted incorporation, the registered voters participating in the election and attempted incorporation were all residents of the community of Miami Shores, which is comprised of territory solely

west of Biscayne Bay and not a part of the territory hereinabove first described.

The Relators further give the Court here to understand and be informed that the said registered voters of the pretended Town of Miami Shores attempted to incorporate approximately sixteen square miles of land and attempted to incorporate the land hereinabove first described, which is not and cannot be considered as a part of the community of Miami Shores, but is far removed and isolated as aforesaid.

The Relators further give the Court here to understand and be informed that since the attempted incorporation of said land, the said pretended Town of Miami Shores has made no improvements whatever on said property or any portion thereof, by way of building streets, sidewalks or roads, or the laying out or grading or hard surfacing of any streets or roads; that no sewers have been laid or water mains placed; that no improvements whatever have been made or are even in contemplation by the said pretended municipality within said territory; that no benefits whatsoever have accrued to said property or any portion thereof, or to any of the owners of said property, and none are probably or contemplated, thereby denying said property owners, and the co-relators in particular, the equal protection of the laws and enjoyment of their property, and denying them the benefits of resort to the Courts for the injury done them and their lands by the constant taxation thereof for town purposes, without the probability of receiving any benefits, and depriving them of their property without due process of law; that such taxation amounts to the taking of property without just compensation and is confiscatory, and in violation of the property rights of the co-relators; that the said acts of the respondent violate Sections 1 and 5 of Article 9 of the Constitution of the State of Florida, in that the co-relators who are the owners of land within said

territory hereinabove first described, are objecting to their inclusion within the said limits of the pretended town, they have always objected and refuse to pay taxes or to recognize the existence of said pretended town, and that they do not own any land within the limits of the said pretended town except as hereinabove described; that the property of the co-relators is too remotely located from the built-up portion of the municipality, which is west of Biscayne Bay, to receive any benefits therefrom, and cannot have a just valuation as a basis of assessment for municipal purposes and thereby depriving the co-relators of their constitutional rights and privileges and denying them resort to the Courts in violation of their constitutional rights; that said lands are too remote from the business and residential section of the pretended town to derive any benefit therefrom and are receiving no benefits whatever, either to said lands or to the owners thereof; that the only purpose of the attempted inclusion of said territory within the boundaries of the pretended town was that the same might be taxed to support the town government of the pretended Town of Miami Shores and to pay off the indebtedness created for the sole benefit of the business and residential district of said town, and not created for the benefit of the territory hereinabove first described, a portion of which is owned by the co-relators, does not properly belong to the community comprising the said pretended Town of Miami Shores, but is remote therefrom and inaccessible thereto, and is more accessible to the City of Miami Beach, and that said territory has not been laid out upon a plan or as a part of the municipality of Miami Shores, but such residences as are located thereon were built independent and without reference to the laying out of the pretended municipality of Miami Shores.

Whereupon the said Attorney General, for the said State, in the name and by the authority thereof, and the co-relators, pray the consideration of the Court here in the premises, and due process of law in this

behalf to L. H. Harrington, Louis Nathan, H. Goodrich, John A. Mahood, William Bennett,
81 Jack Bettles, John V. Shellhorse, H. H. Hawthorne, C. A. McDonald and the Town of Miami Shores, a pretended municipal corporation, to answer to the said State by what warrant or authority of law they claim to exercise offices, franchises, liberties and powers as aforesaid.

FRED H. DAVIS,
Attorney General, Relator.

(Corporate Seal) NORTH ISLAND INVESTMENT COMPANY,
By HARVEY MANSFIELD,
Asst. Secy.

(Corporate Seal) INDIAN CREEK GOLF CLUB,
By HARVEY MANSFIELD,
Asst. Secy.

(Corporate Seal) THE NORMANDY BEACH DEVELOPMENT COMPANY,
By WALTER C. ENSIGN,
LUCILLE F. ENSIGN,
WALTER C. ENSIGN,
Co-Relators.
HENRY K. GIBSON,
MILLER & McKAY,
Attorneys for Relators.

Attached to said Information as Exhibits are in words and figures the following, to-wit:

RELATORS' EXHIBIT "A".

Book 920, Page 193.

Transcript of the Proceedings of the Meeting Held February 5, 1926, for Incorporation of the Town of Miami Shores.

Pursuant to the advertised notice hereto attached this meeting was called to order at the time and place

designated in the notice, by V. Earl Irons. A motion was made and carried that Earle Morgan be permanent chairman of the meeting. Motion was also made and carried that Edward C. Dougherty be Clerk of the meeting.

The Chairman and Clerk took their respective places and the Chairman called the meeting to order and stated the object of the meeting. Upon careful reviewing the list of registered voters, it was found that there resided in the territory to be incorporated forty-nine (49) registered voters. The Chairman announced that it would be necessary to have two-thirds
82 of the registered voters residing within the proposed corporate limits present at this meeting. It was found that thirty-eight (38) registered voters residing within the proposed corporate limits were present. The Chairman then ascertained that more than two-thirds of the qualifed electors were present, and declared that it was now in order to proceed to the further business of the meeting.

The Chairman called upon the Clerk to read the notice calling the meeting, and the Clerk read the notice, as follows:

Notice.

To Whom it May Concern:

Take notice that on the fifth day of February, in the year of Our Lord One Thousand Nine Hundred and Twenty-six, at the hour of eight o'clock P. M., at the Office of Irons Manor, on the West Dixie Highway, between Eucalyptus Court and Avenue D (about one mile West of Arch Creek Station), in the County of Dade and State of Florida, there will be an assembling and meeting of all citizens who are registered voters

residing within the following described boundaries, to-wit:

Beginning at a point 1500 feet East of where the North line of Section 2 in Township 53 South of Range 42 East intersects the low water mark of the Atlantic Ocean; thence run 1500 feet west to the said intersection of the low water mark of the Atlantic Ocean with the North line of said Section 2 in Township 53 South, Range 42 East, and continue West along the North line of said Section 2, in Township 53 South of Range 42 East to a point in Biscayne Bay where the said North line of said Section 2, Township 53 South, Range 42 East, projected West, intersects the Easterly boundary of the City of Miami, Dade County, Florida, thence in a Northerly direction along the Easterly boundary of the City of Miami, to the Northeasterly corner of the City of Miami (said Northeasterly corner being a point in Biscayne Bay where the former Easterly limits of the City of Miami extended Northerly intersect with a line 660 feet more or less North of the South line of Section 28, Township 52 South, Range 42 East, produced East); thence West parallel to and 660 feet more or less North of South line of Sections 28, 29 and 30, Township 52 South, Range 42 East, and Sections 25 and 26, Township 52 South,
83 Range 41 East, to the West line of the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼) of Section 26 Township 52 South, Range 41 East; thence South along said West line to the North line of Section 35, Township 52 South, Range 41 East, thence West on the North line of said Section 35, Township 52 South, Range 41 East to the Northwest corner of said Section 35, Township 52 South, Range 41 East to the Northwest corner of said Section 35, Township 52 South range 41 East; thence North along the West line of Sections 26, 23 and 14 of Township 52 South, Range 41 East, to the Northwest corner of Section 14, Township 52 South,

Range 41 East; thence East along the North line of Sections 14 and 13 of Township 52 South, Range 41 East, and continuing East along the North line of Section 18 Township 52 South, Range 42 East to the Northeast corner of the Northwest Quarter of said Section 18, Township 52 South, Range 42 East; thence South along the center line of said Section 18, Township 52 South, Range 42 East, to the Southeast corner of the Southwest Quarter (SW¼) of said Section 18, Township 52 South Range 42 East, thence East along the North line of Sections 19, 20, 21, 22 and 23 of Township 52 South, Range 42 East to the low water mark of the Atlantic Ocean; thence continue 1500 feet East; thence run in a Southerly direction meandering 1500 feet East of the low water mark of the Atlantic Ocean to the place of beginning; being in the County of Dade and State of Florida.

at which said meeting it is proposed to organize a municipal government for the said above described tract of land and select a name for the proposed town; and also to select officers to maintain and operate the said municipal government, and to do such other acts and deeds as may be necessary for the establishment of a town government, as provided in Sections 1825-1828 of the Revised Statutes of Florida:

R. L. CRIBBLE,
W. P. BRION,
EARLE MORGAN,
D. G. BAKER.

The Chairman then announced that the next business in order was to vote on the question of the incorporation of the Town. Mr. D. F. Baker presented the following motion:

"I move that we incorporate a Town, with the territorial limits described in the Notice calling this meeting which has been read by the Clerk."

84 The motion was duly seconded, and upon a vote being taken it was ascertained that thirty-eight (38) qualified electors favored adoption of the motion, and that none of the qualified electors opposed the adoption of the Motion. The Chairman announced that the motion was carried unanimously, and thereupon declared that the Town was now incorporated.

A motion was then made by Mr. D. F. Baker that the name of the town be "Town of Miami Shores." The motion was seconded, and carried unanimously.

Mr. D. F. Baker then presented the following motion:

"I move that the corporate seal of the Town be as follows:

"A round seal with the words 'Town of Miami Shores' arranged in a semi-circle in the upper portion; the words 'Dade County, Florida,' arranged in a semi-circle in the lower portion; and the words and figures 'Incorporated Feb. 5, 1926' appearing in the center with a conventional ocean wave below."

The motion was seconded, and carried unanimously.

The Chairman announced that the next business before the house was the election of the following officers to maintain and operate the municipal government; A Mayor, Town Clerk, Town Marshal, and not less than five and not more than nine Aldermen. A motion was then made by Mr. D. F. Baker that the number of Aldermen shall be seven (7) The motion was seconded and carried unanimously. The Chairman announced that nominations were in order for the various offices, whereupon Mr. George Douglas nominated Mr. D. F. Baker for

the office of Mayor; Mr. Edward C. Doughtery for the office of Town Clerk; Mr. J. T. Williams for the office of Town Marshal; and Messrs. Earle Morgan, V. Earl Irons, A. M. Griffing, J. B. Jeffires, W. P. Brion, Paul Prigg, and R. L. Gribble for the office of Aldermen. The Chairman called for further nominations, but none were made. A motion was then made, seconded and carried unanimously that the nominations be closed. The Chairman appointed Messrs. W. P. Brion, W. I. Brazelton, J. W. Wiggins and R. B. Paulson to act as tellers. The qualified electors present having cast their ballots, the tellers, having canvassed the returns, reported the result of the election to the Chairman. Upon reviewing this report, the Chairman announced the result as follows:

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For Mayor—

Number of votes cast	37
D. F. Baker received	37

For Town Clerk—

Number of votes cast	37
Edw. C. Dougherty received	37

For Town Marshal—

Number of votes cast	37
J. T. Williams received	27
C. L. Kalch received	9
W. M. Bennett received	1

For Alderman:

Earle Morgan received	37 votes
V. Earl Irons received	37 votes
A. M. Griffing received	37 votes
J. B. Jeffries received	37 votes
W. P. Brion received	37 votes
Paul Prigg received	37 votes
R. L. Gribble received	37 votes

The chairman then announced: "The following persons having received a majority vote of the meeting, I hereby declare them to be elected as officers of the Town of Miami Shores, for the period prescribed by law:

Mayor.....D. F. Baker
Town Clerk.....Edw. C. Dougherty
Town Marshal ...J. T. Williams
Alderman.....Earle Morgan
Alderman.....V. Earl Irons
Alderman.....A. M. Griffing
Alderman.....J. B. Jeffries
Alderman.....W. P. Brion
Alderman.....Paul Prigg
Alderman.....R. L. Gribble"

86 The business of the meeting having been concluded; it was moved and carried that the meeting adjourn.

We hereby certify that the above is a true and correct transcript of the proceedings of the incorporation meeting held February 5, 1926.

D. F. BAKER,
Mayor.
EARLE MORGAN,
R. L. GRIBBLE,
J. B. JEFFRIES,
V. EARLE IRONS,
W. P. BRION,
A. M. GRIFFING,
(Corporate Seal) H. PAUL PRIGG,
Alderman.

Attest:

EDWARD C. DOUGHERTY,
Town Clerk.

Notice.

To Whom it May Concern:

Take notice that on the fifth day of February, in the year of Our Lord One Thousand Nine Hundred and Twenty-Six, at the hour of eight o'clock P. M., at the Office of Irons Manor, on the West Dixie Highway, between Eucalyptus Court and Avenue D (about one mile West of Arch Creek Station,) in the County of Dade and State of Florida, there will be an assembling and meeting of all citizens who are registered voters residing within the following described boundaries, to-wit:

Beginning at a point 1500 feet East of where the North line of Section 2 in Township 53 South of Range 42 East intersects the low water mark of the Atlantic Ocean; thence run 1500 feet west to the said intersection of the low water mark of the Atlantic Ocean with the North line of said Section 2 in Township 53 South, Range 42 East, and continue West along the North line of said Section 2, in Township 53 South of Range 42 East to a point in Biscayne Bay where the said North line of said Section 2, Township 53 South, Range 42 East, projected West, intersects the Easterly boundary of the City of Miami, Dade County, Florida, thence in a Northerly direction along the Easterly boundary of the City of Miami, to the Northeasterly corner of the City of Miami (said Northeasterly corner being a point in Bascayne Bay where the former Easterly limits of the City of Miami extended Northerly intersect with a line 660 feet more or less North of the South line of Section 28, Township 52 South, Range 42 East, produced East); thence West parallel to and 660 feet more or less North of South line of Sections 28, 29 and 30, Township 52 South, Range 42 East and Sections 25 and 26, Township 52 South Range 41 East, to the West line of the Southeast Quarter (SE¼) of the Southeast

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Quarter (SE¼) of Section 26 Township 52 South, Range 41 East; thence South along said West line to the North line of Section 35, Township 52 South, Range 41 East, thence West on the North line of said Section 35, Township 52 South, Range 41 East to the Northwest corner of said Section 35, Township 52 South Range 41 East; thence North along the West line of Sections 26, 23 and 14 of Township 52 South, Range 41 East, to the Northwest corner of Section 14, Township 52 South, Range 41 East, thence East along the North line of Sections 14 and 13 of Township 52 South, Range 41 East, and continuing East along the North line of Section 18, Township 52 South, Range 42 East, to the Northeast corner of the Northwest Quarter of said Section 18, Township 52 South, Range 42 East, thence south along the center line of said Section 18, Township 52 South, Range 42 East, to the Southeast corner of the Southwest Quarter (SW¼) of said Section 18, Township 52 South, Range 42 East, thence East along the North line of Sections 19, 20, 21, 22 and 23 of Township 52 South, Range 42 East, to the low water mark of the Atlantic Ocean; thence continue 1500 feet East; thence run in a Southerly direction meandering 1500 feet East of the low water mark of the Atlantic Ocean to the place of beginning; being in the County of Dade and State of Florida.

88 at which said meeting it is proposed to organize a municipal government for the said above described tract of land and select a name for the proposed town; and also to select officers to maintain and operate the said municipal government, and to do such other acts and deeds as may be necessary for the establishment of a town government, as provided in Sections 1825-1828 of the Revised Statutes of Florida.

R. L. CRIBBLE,
W. P. BRION,
EARL MORGAN,
D. F. BAKER.

(Filed Mar. 8, 1926, at 12:53 o'clock P. M., and recorded in the Book noted above. Geo. F. Holly, Clerk Circuit Court, Dade County, Florida).

State of Florida,
County of Dade, ss.

Earle Morgan, being first duly sworn according to law, deposes and says: That he is a citizen of Florida and a resident of Dade County; that on the fourth day of January, A. D. 1926, affiant posted the foregoing notice in more than three places of public resort in the immediate vicinage within the proposed corporate limits, requiring all persons who were registered voters residing in the proposed corporate limits to assemble at the time and place therein stated, to select officers and organize a municipal government; That affiant posted said notice in the following manner, to-wit: That affiant on the date aforesaid posted a copy of said notice in the waiting room of the Arch Creek Station of the Florida East Coast Railroad; That affiant on the date aforesaid posted a copy of said notice in front of the Irons Manor Field Office on the West Dixie Highway, between Avenue "D" and Eucalyptul Court; that affiant on the date aforesaid posted a copy of said notice at the front door of W. E. Spruill's Drug Store, at the Southwest corner of the West Dixie Highway and Tenth Street, Biscayne Park Estates; That affiant on the date aforesaid posted a copy of said notice at the Northwest corner of Gratigny Boulevard and Northwest Eleventh Avenue, Sunkist Grove; That affiant on the date aforesaid posted a copy of said Notice at the front door of the "Baker's Haulover Barbecue" at Baker's Haulover;

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That each and every copy of said notice so posted were true and correct copies of the foregoing notice; and that affiant knows of his own knowledge that each and every of said notices so posted by the affiant remained posted at the aforesaid places where affiant posted them, continuously from the said fourth

day of January, A. D. 1926, to and including eight o'clock P. M., on the fifth day of February, A. D. 1926, the day and hour fixed for the meeting by said notices.

EARLE MORGAN.

Sworn to and subscribed before me this sixth day of February, A. D. 1926.

EDWARD C. DOUGHERTY,
Notary Public, State of Florida at Large. My Commission expires: Oct. 28, 1929.

State of Florida,
County of Dade, ss.

I hereby certify that the above and foregoing is a true and correct copy of a Deed filed in my office the 8th day of March, A. D. 1926, at ..... M., and recorded in Deed Book 920, at page 193.

Witness my hand and official seal this 3rd day of Dec., A. D. 1928.

E. B. LEATHERMAN,
Clerk Circuit Court.
By F. L. DAVIS,
(Ct. Ct. Seal) Deputy Clerk.

The following is a photostatic copy of Exhibit B, which is itself a photostatic copy of a map.

Photostatic Copy Of Sketch

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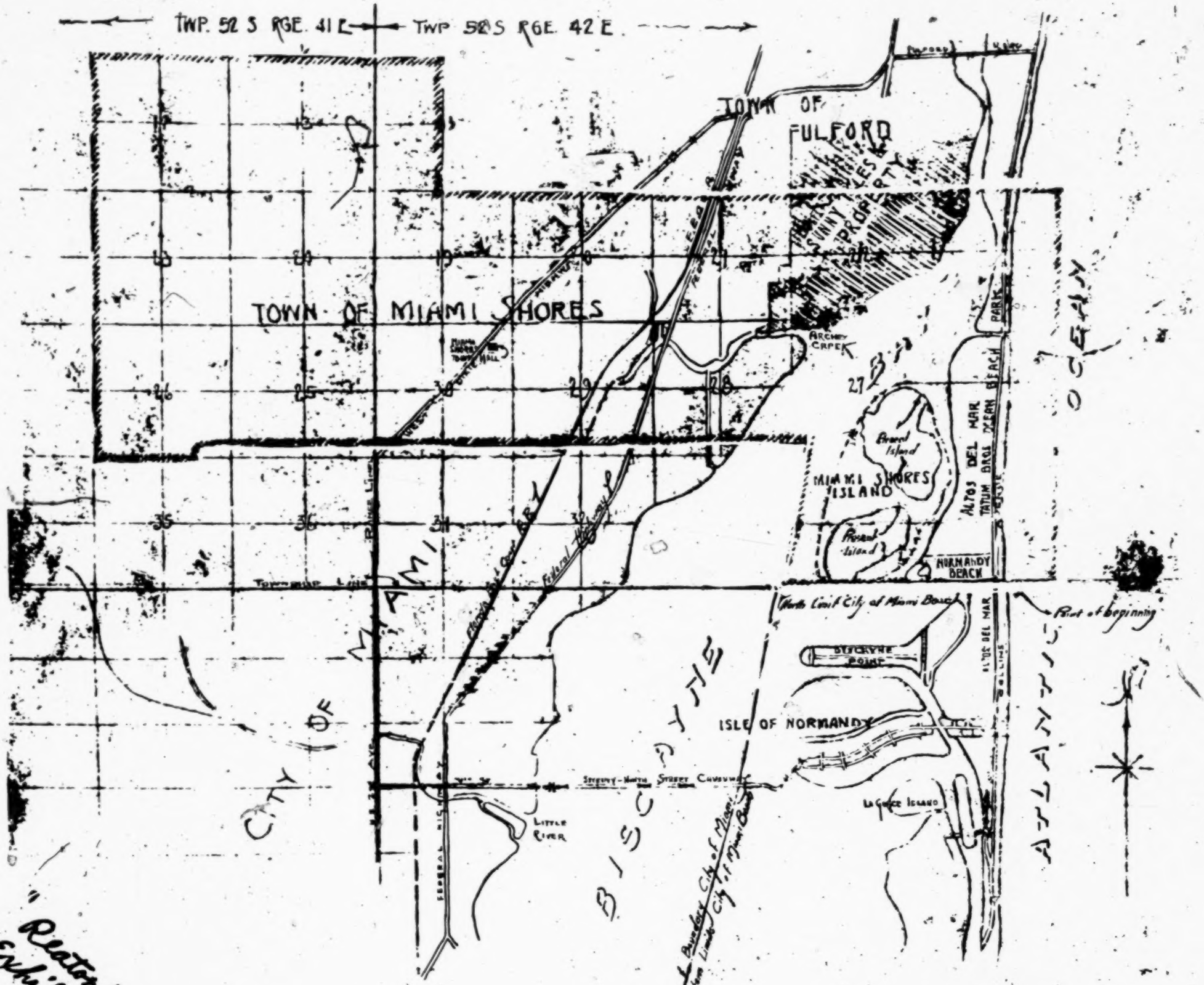

Sketch to Accompany Description of Area lying east of the Center Line of Biscayne Bay in the Town of MIAMI SHORES

Reeter's Exhibit "B"

SURVEYED and APPROVED BY
A. Dillinkel
Reg. Civil Engineer No. 342 State of Florida

91 On the 7th day of June, A. D. 1935, Stipulation was filed, in the words and figures following, to-wit:

STIPULATION.

(Title Omitted.)

It Is Hereby stipulated by and between The Brown Crummer Investment Company, plaintiff herein and The Normandy Beach Development Company, one of the defendants herein, by and through their respective counsel, that no Decree Pro Confesso having been entered or even asked for against The Normandy Beach Development Company up to this time, and there being no objection upon the part of the plaintiff to the filing of an Answer by said defendant, The Normandy Beach Development Company,

Now Therefore be it agreed and stipulated by and between the said parties hereto, that said The Normmandy Beach Development Company may have and does hereby have up until and including Thursday. June 6th, 1935, within which time to file its Answer as it may be advised, in said cause above.

THE BROWN CRUMMER INVESTMENT COMPANY,
By GILES J. PATTERSON,
Its Solicitor.
THE NORMANDY BEACH DEVELOPMENT COMPANY,
By HENRY K. GIBSON,
Its Solicitor.

June 5, 1935.

92 On the 7th day of June, A. D. 1935, The Normandy Beach Development Company files its Answer, in the words and figures following, to-wit:

THE ANSWER OF THE DEFENDANT, THE NORMANDY BEACH DEVELOPMENT CO., TO THE BILL OF COMPLAINT.

(Title Omitted.)

Answering the Bill of Complaint herein, and each paragraph thereof as numbered therein, the defendant, The Normandy Beach Development Company, an Ohio corporation, says, that:

1. It admits the allegations, contained in Paragraph I.

2. It admits that the town, formerly called Miami Shores and now called North Miami, is a purported municipal corporation attempted to be organized in 1926, and which the plaintiff claims exists under and by virtue of Sections 1825 to 1828, inclusive, of the Revised General Statutes of Florida of 1920; also that the name of the said purported town as originally attempted to be incorporated has been changed to the Town of North Miami by a purported special act of the Legislature of the State of Florida, purported to have been enacted at the Extraordinary Session of 1931, and that such special act has been designated Chapter 15823; also that, after the purported organization of the said town, the said town assumed and claimed to have exercised all the functions and powers attempted to be confided to properly organized towns by virtue of the laws above mentioned,
93 including the exercise of police power, supervision of health, providing for the collection of

garbage, elimination of mosquitoes, etc., in the territory west of Bay Biscayne, hereinafter described, but this defendant denies that the said town has assumed and exercised said municipal functions in the territory East of Bay Biscayne, hereinafter described.

3. It admits each and every the allegations contained in Paragraph III.

4. It admits that the plaintiff instituted a suit in the above entitled Court on September 8, 1930, upon certain obligations of the said town as alleged in Paragraph IV; that a final judgment was rendered in said action, which was recorded, as alleged in said Paragraph IV; that the time for appeal has expired, and that no part of it has been paid, as alleged in Paragraph IV; that the plaintiff is the owner and holder of bonds and coupons, as alleged in the said Paragraph IV; but it is without knowledge as to whether the said town has no property subject to execution, and no means of raising funds to pay such judgment other than by the exercise of the power of taxation; it admits that Section 1903 of the Revised General Statutes of 1920 is as quoted in in said Paragraph IV.

5. It admits that, by the terms of said bonds and said statute authorizing the issuance of same, said town pledged its full faith and credit for the payment of same and to levy a tax upon all the taxable property in said town for the payment of the same, but this defendant is without knowledge as to whether that is the sole security for the payment of the said bonds. It denies, however, that the said town pledged itself to levy taxes on this defendant's lands lying East of Biscayne Bay to pay the plaintiff's bonds, and denies that said bonds and said statute contemplate that taxes shall be levied against this defendant's said lands to pay said bonds, for the reason that the said lands have never been in the said town. It admits that, by

virtue of the said statute, it became and was the duty of the town officials to levy sufficient tax and assessment upon all real and personal property within the town, but not as the town was attempted to be defined at the time of its organization, for the reason that all the lands lying East of Biscayne Bay, including
94 this defendant's lands, were never in the said town, and there did not exist any authority in law for the attempted inclusion of said lands in the said town, and said lands are not now, and never have been, in said town, nor subject to taxation for the payment of the plaintiff's said judgment, bonds and coupons.

6. It is without knowledge as to whether any proceeds derived from the sale of the said bonds, hereinbefore mentioned, were expended by the said town in the construction of public improvements which became a part of the permanent assets of the said town, but this defendant admits that, if any such proceeds were invested in public improvements by the said town and said improvements are of a governmental character, they are assets that are exempt from levy and sale under execution against the said town. This defendant denies that the so-called benefits or the so-called improvements are now, or ever have been, available to this defendant, because the lands of this defendant lie East of Biscayne Bay, and are not now, and never have been, within the corporate boundaries of the said town. This defendant denies that any proceeds of the said bonds were expended on improvements for the benefit of this defendant's lands, or in the neighborhood of this defendant's lands, or that this defendant's lands got the benefit of any of said improvements.

7. This defendant denies that it, ever affirmatively, or otherwise, consented to the inclusion of this defendant's lands lying east of Biscayne Bay in the said town. This defendant denies that it advertised in any

newspaper that its property had been included in the said town. This defendant admits that it did not file any objections to the purported incorporation of said properties within the said town and defendant alleges that it had no actual notice of the intention to form said town. This defendant alleges that it has owned a large number of parcels of real estate within the alleged town and east of Bay Biscayne for many years, to-wit: since 1924; that upon learning of the incorporation of said town, this defendant engaged counsel immediately for the purpose of seeking legal advice as to what might be done to prevent the levy and collection of taxes against lands owned by this defendant.

95 This defendant alleges that upon its employment of counsel, advice was given that this defendant had no remedy and no method of relief.

This defendant alleges that it was not satisfied with the aforesaid advice and employed other and different counsel, with the result that a suit was instituted for the purpose of securing the relief desired by this defendant and the exclusion of the lands owned by this defendant, from the purported town.

This defendant also alleges that the litigation it instituted was unsuccessful and met with failure.

This defendant alleges that after two unsuccessful attempts, this defendant again sought other and additional counsel, in the belief that the injustice of the purported inclusion of the lands of this defendant, might be rectified, and with the result that upon the suggestion and advice of counsel for this defendant, the quo warranto suit was filed as aforesaid on August 12, 1929.

This defendant admits that, after the bonds had been authorized by the said officials of said town, a proceeding was filed in the Circuit Court of Dade County for the validation of said bonds and that a final decree was made and entered by said Circuit Court in accordance with the requirements of statute. It admits that, at the time of said validation, no objections were made by this defendant thereto nor did this defendant file any proceedings to restrain the issuance of said bonds or to attack the validity of same, and that said proceedings gave full notice that the said town, by the terms of said bonds, intended to pledge its full faith and credit for the payment of the same, and that no appeal was taken by this defendant from said decree of validation, and this defendant did not object to the sale of the said bonds or to the expenditure of the proceeds derived from the sale for the construction of public improvements within said town.

8. It admits that, on August 12, 1929, the quo warranto proceeding was filed in the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, in the manner and by the parties named in said Paragraph VIII, against the said town
96 and its officials, and for the purposes alleged in said Paragraph VIII, and that the property described in the Information upon which the Writ was issued is located East of Biscayne Bay, and is described in the bill of complaint, and includes the property of this defendant, and that this defendant's lands were attempted to be included within the corporate limits of the said town when the bonds described in the bill of complaint and upon which judgment was obtained were issued. It admits that neither the plantiff nor any other holder of bonds or coupons were made parties to said suit, nor intervened therein.

It admits that a final judgment was entered in said quo warranto proceeding, the effect of which was to

oust and prohibit the said town and its officials from exercising the offices, franchises and privileges of a municipality over the lands of this defendant and the lands of other defendants, East of Biscayne Bay. It admits that, upon appeal to the Supreme Court of Florida, said judgment of ouster was reversed and remanded to the Circuit Court with directions that further proceedings be had in said cause not inconsistent with the opinion of said Supreme Court, and that said cause was again tried in the Circuit Court and a final judgment of ouster was entered, and that the said town appealed from said judgment and that said appeal was dismissed and that said judgment has become final. It avers that said judgment, in its finality, not only ousted, prohibited and excluded said town and its officials from exercising jurisdiction and powers over this defendant's lands, and other lands East of Biscayne Bay, but also adjudicated that the said lands never were in the said town, and that their attempted inclusion therein was illegal, void and without authority of law, and this defendant avers that, because of said adjudication, there never has been any necessity for said lands to be excluded from said town, for the reason that they never have been in the said town.

9. It admits each and every the allegations in Paragraph IX, except that it avers that the rights of the plaintiff do not now, and never have, included any rights to have the lands of this defendant subjected to any jurisdiction of the said town, for the
97 purposes of taxation or otherwise, and except that it is without knowledge concerning when and how the plaintiff learned of the suit and the appeal mentioned in said Paragraph IX.

10. It admits each and every the allegations in paragraph X, except that it denies that its lands are now, or ever have been, subject to assessment for taxation by the said town.

12. It admits each and every the allegations in Paragraph XII, except that it is without knowledge as to whether the said town will continue to allow additional interest and principal on the plaintiff's bonds to mature and go unpaid.

13. It admits that the said town prepared its budget for the year 1932, and included in said budget a levy of 19 mills against the property East of Bay Biscayne, said levy being made to pay the proportionate part of the bonded debt and expenses of collecting the same, but it denies that the levies of 19 mills in 1932 and 16 mills in 1933 were made pursuant to the said Peremptory Writ, and avers that such levies were voluntary and without authority of law, and were grossly in excess of the amount necessary for debt service; this defendant denies that the effect of the State Court's judgment of ouster operated to exclude the lands East of Biscayne Bay from the said town, and, on the contrary, avers that the said judgment of ouster operated to exclude the town and its officials from exercising any jurisdiction or powers over the said lands, because the attempt of the said town and its officials to include the said lands within the boundaries of the said town, at the time of its organization, was void from the very beginning, and the said lands never were, and are not now, within the boundaries of the said town for any purpose whatsoever.

This defendant admits that the officials of the said town are ready and willing to continue to levy and collect taxes against the property East of Biscayne Bay to pay any part of the judgment held by the plaintiff, but this defendant denies that the said town and its officials have any power or authority to assess, levy or collect any taxes against the said lands.

98 This defendant admits that, if a suit be brought to enforce the collection of such

taxes, the judgment of ouster would be a complete defense to any action brought by the said town, as alleged in the bill of complaint, and this defendant admits that the injunction already obtained in the State Court, as alleged in the bill of Complaint, by some of the defendants, restrains the issuance of tax deeds based upon tax certificates and declares the taxes already purported to be pledged by the town against property East of Biscayne Bay to be void and also prevents the said town from enforcing the collection of taxes attempted to be heretofore levied on said property by said town.

It denies that, if the owners of property East of Biscayne Bay be permitted to utilize the judgment of ouster and the injunction obtained in the State Courts, as alleged in the bill of complaint, it would be impossible for the plaintiff and other bondholders to realize sufficient sums out of the remaining properties within the boundaries of the said town to pay the amounts due them.

It admits that this defendant has been demanding and will continue to demand of the Clerk of the Circuit Court of Dade County, Florida, that he cancel all tax certificates held by him against its property, on the ground that the same are void under the decisions of the Supreme Court of Florida, holding that its lands never were in the limits of the said town from the time of its organization, and this defendant admits that it will bring actions to compel the said Clerk of the said Circuit Court to cancel the said void tax certificates whenever necessary.

It denies that the plaintiff and other bondholders of the said town are without remedy at law to protect and enforce whatever rights they may have, and it denies that the plaintiff and other bondholders of the said town have any rights whatsoever, by virtue of the

Statutes of the State of Florida or otherwise, in the lands of this defendant and in the other lands East of Biscayne Bay; and this defendant avers that, by force of the Statutes of The State of Florida as construed by the highest Court of the said State, the plaintiff and other bondholders of the said town have
99 no such rights, as alleged in the bill of complaint, against the lands of this defendant and other lands East of Biscayne Bay; and it denies that the plaintiff and other bondholders of the said town are entitled to any rights in the lands of this defendant and in the other lands East of Biscayne Bay, by virtue of any provision in the said bonds or by virtue of any decision of this Court, or otherwise.

It deines that the enforcement of the judgment of ouster of the State Court and the injunctions of the State Courts would destroy the value of the plaintiff's judgment and bonds by taking away more than 60% of the security which was originally attempted to be pledged for the payment of the same, but, on the contrary, this defendant avers that its lands and other lands East of Biscayne Bay have never been any part of the security for the payment of said judgment and the said bonds, and the attempt by said town and its officials to pledge said lands was without authority of law and was wholly null and void.

It denies that the enforcement of the said judgment of ouster and the said injunctions would impair any contractual obligations between the said town and the plaintiff and other bondholders; but, on the contrary, this defendant says that to subject its lands and the other lands East of Biscayne Bay to taxation by the said town and its officials, for any purpose whatsoever, would amount to the taking of this defendant's lands, and the other lands East of Biscayne Bay, without due process of law, since the power granted by the Legislature of the State of Florida, by the statutes

under which the said town was organized; and as unequivocally interpreted by the highest Court of the State of Florida, never existed in the said town and its officials to the extent of warranting the inclusion in the boundaries of the said town the lands East of Biscayne Bay, which are not, and never were, contiguous or reasonably near the community center of the said town as organized.

14. It admits that, on November 15, 1932, the plaintiff filed a bill for an injunction in this Court, as alleged in the bill of complaint herein, but
100 this defendant avers that the said bill was voluntarily withdrawn at the suggestion of the Court, because it was manifestly filed prematurely and that there was no litigation pending in the State Court at that time and because the said bill was without merit; it denies that either it or its counsel ever entered into any stipulation whatever in open Court or elsewhere not to apply for an injunction or to otherwise assert its property rights.

It denies that the plaintiff has relied, or had any reason to rely, on any alleged oral stipulation, as alleged in the bill of complaint herein, and this defendant avers that it and its counsel never were a party to any such stipulation.

It denies that it should be estopped from availing itself of any remedies it may have for the protection of its property rights as ascertained by the highest Court of the State of Florida, in interpreting Florida Statutes; and it denies that it is estopped by reason of any attempted intervention in the mandamus suit, as alleged in the bill of complaint herein, and it avers that it was denied by the Circuit Court of Appeals, the right to intervene in said mandamus proceeding and was denied the right to set up any defense therein and was denied the right to appeal from the judgment therein.

15. It denies that the judgments described in Paragraph VIII of the bill of complaint are void as to the rights of the plaintiff or anyone else, for any purpose whatsoever, and it denies that the said judgment of ouster will impair the contract made by said town and the plaintiff and other bondholders, in any manner whatsoever; and this defendant avers that the said judgment of ouster, being nothing more than a judicial decision, does not come within the protection of the Federal or the State Constitutions prohibiting the passage of laws that would impair the obligations of contracts.

It is without knowledge as to whether the said judgment of ouster has delayed the said town in the payment of its obligations; and it denies that the said judgment of ouster will delay and injure the plaintiff.

It denies that the operation of the said
101 judgment of ouster will injure the plaintiff and diminish the value of the contracts held by the plaintiff and other bondholders, so far as their rights extend under said contracts; and it avers that its lands and other lands East of Biscayne Bay never were within the power of the said town and its officials to pledge as security for any purpose whatsoever.

It denies that the enforcement of the said judgment of ouster and the said injunctions, alleged in the bill of complaint, herein, will deprive the plaintiff and other bondholders of their property and property rights without due process of law; and, on the contrary, this defendant avers that any interference by this Court with the operation of the said judgment of ouster and this defendant's remedies thereunder would be to deprive this defendant, and other owners of lands East of Biscayne Bay, of their property and property rights, without due process of law, and would deny to them the equal protection of the laws, in violation of the Constitution of the United States.

It admits that the plaintiff and other bondholders of the said town were not parties to the proceeding in which the said judgment of ouster was entered, and in which the injunction was issued, in Alta Cliff Co., et al., vs. Leatherman, Clerk, but this defendant avers that the decisions of the highest Court of the State of Florida in said cases are judicial precedents that are binding on the Federal Court, and that the Federal Court is without authority to grant the relief prayed by the bill of complaint herein.

It denies that it has derived any benefits from any public improvements constructed with the proceeds of the bonds, as alleged in the bill of complaint herein, or otherwise, by virtue of any action of the said town; and it denies that the said town and its officials ever had any power or authority to use the credit of this defendant's property and other property East of Biscayne Bay for the purpose of making public improvements or otherwise.

It admits that the operation of the said judgment of ouster would prevent the said town from levy-
102 ing and collecting taxes, for the payment of the plaintiff's judgment and the bonds and coupons, from the properties of this defendant and the properties of other owners East of Biscayne Bay.

It is without knowledge as to whether the property that was legally within the said town, at the time of its organization, would be wholly insufficient to enable the said town to pay said bonded debt by the levy of taxes or otherwise, and that it would work such a hardship upon the individual property owners within the said town for this Court to recognize the law as it has been established by the Supreme Court of Florida, and that taxes would not be paid and that taxes would be so great as to be uncollectible and payment to the plaintiff and other bondholders would be indefinitely delayed.

It denies that the enforcement of the said judgment of ouster and injunction decrees of the Supreme Court of Florida, as alleged in the bill of complaint herein, would be contrary to all recognized principles of equity and standards of good conscience by reason of the facts alleged in the bill of complaint, or otherwise.

It denies that the plaintiff has now, or ever has had, any vested rights in taxes purported to have already been levied by said town against the lands of this defendant and other lands East of Biscayne Bay; and it avers that any such purported tax levy is null and void, constitutes no lien on said properties East of Biscayne Bay, and is without any legal basis for enforcement.

16. It admits that it is demanding, and will hereafter demand, the cancellation of all outstanding tax certificates issued against its lands by the said town, and that the basis for such cancellation are the authorities alleged in the bill of complaint, but it denies that the cancellation of such tax certificates is of such damage to the plaintiff as can be relieved by this Court.

17. It admits each and every the allegations contained in Paragraph XVII.

18. This defendant denies that it, ever consented to the validity of the incorporation of the said town, and this defendant denies that it is now, or ever has been, estopped from attacking the validity of the incorporation of the said town.

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This defendant admits that it will continue to question and seek to enjoin the collection of taxes levied by the said town, on its lands or the issuance of tax deeds upon tax certificates issued pursuant to any purported sale by the said town of this defendant's lands for such taxation, and that it will, if necessary, institute further litigation to protect its property rights,

but this defendant denies that the plaintiff is entitled to the issuance of an injunctive order against this defendant restraining it from protecting its property rights in any manner afforded by law; and this defendant avers that the issuance of such an injunctive order would deprive this defendant, and other owners of lands East of Biscayne Bay, of their property without due process of law, and would deny to them the equal protection of the laws, for the reason that the said town, at the time of its organization, included within its boundaries, contrary to the Statutes of the State of Florida under which the said town was organized, the lands of this defendant and other lands East of Biscayne Bay which were neither contiguous to nor properly connected with the community center of the said town; and this defendant denies that the denial of such an injunctive order would diminish and depreciate the value of the plaintiff's contracts, but avers that the value of the plaintiff's said contracts is the same as it ever legally was, from the time the said contracts were entered into between the said town and the said plaintiff.

It denies that the plaintiff and any other bondholders are without an adequate remedy at law; and this defendant denies that the remedy of the plaintiff and other bondholders is by any injunctive relief against this defendant that could be granted by this Court, for the reason that the decisions and decrees of the State Courts interpreting the laws of the State, under which the said town was organized, are judicial precedents binding on the Federal Court.

This defendant denies that the plaintiff has exhausted its remedies at law, and, on the con-
104 trary, avers that the plaintiff has an adequate remedy by mandamus to compel the said town and its officials to levy a sufficient tax upon the properties legally within the said town for the payment of the obligations held by the plaintiff.

This defendant denies that any injustice will be done to the plaintiff or other bondholders if they are not made parties to injunction or other proceedings in the State Courts brought by this defendant and other owners of property East of Biscayne Bay for the protection of their property rights, and this defendant avers that the said plaintiff and other bondholders are not necessary parties to said litigation, and this defendant avers that the plaintiff and other bondholders have not themselves sought leave to intervene in any of such litigation in the State Courts.

This defendant denies that this Court has any jurisdiction to grant an injunction in this cause, to restrain the operation of the judgment of ouster of the State Court, for the reason that the State Court first obtained jurisdiction of the res involved herein, and for the additional reason that, even if the Federal Court should take jurisdiction of this suit, it is bound by the decisions of the State Supreme Court interpreting the State Laws under which the said town was organized.

This defendant denies that the plaintiff is entitled to any injunction, as prayed in the bill of complaint herein, against this defendant or any other owners of property East of Biscayne Bay, for the reason that, as held by the United States Circuit Court of Appeals in Normandy Beach Development Co., et al., vs. United States, ex rel., Brown Crummer Investment Co., 69 Fed. (2d) 105, the Peremptory Writ of Mandamus granted by this Court is not binding on this defendant and such other property owners, and for the additional reason that the granting of such an injunction would tend to interfere with the operation of the judgment of ouster of the State Court.

This defendant denies that the plaintiff is entitled to an injunction, as prayed in the bill of complaint herein,

against the said town and its officials, for the reason that the plaintiff has alleged in its bill herein that the said town officials are ready and willing to perform their legal duties with respect to the levying and collecting of taxes against lands within the said town, and for the additional reason that an injunction against the said town and its officials restraining them from refusing to levy and collect taxes with respect to the lands of this defendant and other owners of property East of Biscayne Bay, described in the said judgment of ouster, would directly interfere with the operation of the said judgment of ouster.

This defendant denies that the plaintiff is entitled to an injunction, as prayed in the bill of complaint herein, against the Clerk of the Circuit Court of Dade County, Florida, for the reason that such an injunction would directly interfere with the operation of the said judgment of ouster.

19. Further answering the said bill of complaint herein, this defendant avers that, at the time of the organization of the said town, and now, the said lands East of Biscayne Bay were then, and are now, far removed and isolated from the community of the said town; that the said lands East of Biscayne Bay are separated from the community by the waters of Biscayne Bay, a large and navigable body of water; that, at the time of the organization of the said town, and now, there is no bridge or causeway connecting the said lands with the community center of the said town, and there are no means of travel from the community to the said lands, except by going through the City of Miami and the City of Miami Beach or through the Town of Fulford, now North Miami Beach, and that, by going by any of these routes, it is approximately 10 miles from the town hall and center of said community to the said lands; that the said lands, at the

time of the organization of the said town, and now, is mostly rural, wild and unimproved, covered with thick and heavy growth of seagrape vine, palmettoes, shrubs, bushes, scrub pine trees and other growths incident to lands lying near or contiguous to the Atlantic Ocean; that a small portion of said lands has been, by the owners thereof, subdivided into lots and blocks, but most of these are unoccupied.

106 A map of the said town, according to the purported boundaries attempted to be established at the time of the organization of the said town, showing the relative position and situation of the said lands East of Biscayne Bay and the community center of said town, is hereto annexed, marked "The Normandy Development Company Exhibit A", and made a part of this Answer, with like effect as though herein exhibited.

20. Further answering the said bill of complaint, this defendant avers that, at the time of the organization of the said town, there were not more than 10 registered voters living on said lands East of Biscayne Bay, although in the community of the said town, west of Biscayne Bay, there were approximately 300 voters; that the registered voters of the said town who voted to incorporate the said town, as aforesaid, were all residents on the lands West of Biscayne Bay, and, in describing the boundaries of the said town, attempted to incorporate approximately 16 square miles of land; that, while such an area is known to exist in the cities of Jacksonville, Miami, Tampa and other large metropolitan centers, the relative population of the said Town of North Miami and such large cities is beyond comparison with respect to the extent of the boundaries thereof.

That the said town made no improvements whatever on the lands East of Biscayne Bay or any portion

thereof, by way of building streets, sidewalks or roads, or the laying out or grading or hardsurfacing of any streets or roads; that no sewers have been laid or water mains placed; that no improvements whatever have been made or are even in contemplation by the said town within the lands East of Biscayne Bay; that no benefits whatsoever have accrued to said lands East of Biscayne Bay, or to any of the owners of said lands, by reason of any action by the said town or its officials.

That this defendant has always objected and refused to pay taxes levied by the said town and to recognize the existence of said town, and it does not own any lands within the legal limits of the said town; that the lands of this defendant and other lands East of Biscayne Bay are too remotely located from the
107 portion of the said town that is built up, and which is West of Biscayne Bay, to receive any benefits therefrom; that the only purpose of the attempted inclusion of said lands within the boundaries of the said town was to use the said lands and taxes therefrom for the support of the town government and to pay off the indebtedness created for the sole benefit of the business and residential district of the said town, located West of Biscayne Bay.

And this defendant avers all the matters and things set forth in the Information in the nature of Quo Warranto, filed in the Circuit Court of Dade County, Florida, in the suit of the State of Florida ex rel., Fred H. Davis, Attorney General, vs. Mahood et al., referred to in the Bill of Complaint herein; a certified copy of which Information is hereto annexed, marked "The Normandy Beach Development Company Exhibit "B", and made a part of this Answer, with like effect as though herein set out at length.

HENRY K. GIBSON,
Solicitor for Normandy Beach
Development Company.

(The map referred to in the foregoing Answer is the same as that attached to the Answer of Ocean Beach Heights, Inc., and which was filed in evidence at the trial of the cause, and is shown at page 83 of this Transcript).

(Exhibit "B" attached to the foregoing Answer is the same as Exhibit "B" attached to the Answer of Ocean Beach Heights, Inc., copied in full at page 103 et seq., of this Transcript.)

On the 19th day of July, A. D. 1935, Motion for Order of Reference was filed, in the words and figures following, to-wit:

MOTION FOR ORDER OF REFERENCE.

108 (Title Omitted.)

Comes now The Brown Crummer Investment Company and respectfully represents unto this Honorable Court that the above-styled cause is at issue, and that it is advisable that the cause be referred to a Master, to be appointed by this Court, and who may take testimony and report the same to this Court.

Wherefore, it is prayed that this Court will make and enter an Order referring this cause for the taking of testimony unto a Master, named and appointed by this Honorable Court.

GILES J. PATTERSON,
Attorney for The Brown Crummer Investment Company.

On the 19th day of July, A. D. 1935, Order of Reference was entered, and, on said date, was filed in

the Clerk's office and recorded in Equity Order Book 3, at Page 657, in the words and figures following, to-wit:

ORDER OF REFERENCE.

(Title Omitted.)

This cause coming on to be heard upon the motion of the Plaintiff for an Order of Reference, it being made to appear to the Court that said cause is at issue, answers to the Bill of Complaint having been filed herein by the defendants,

It Is, Therefore, Ordered, Adjudged And Decreed that said cause be, and the same is, hereby referred to
T. J. Dowdell, Esquire, one of the general
109 masters of this Court who is hereby ordered and directed to take the evidence as may be produced by the parties, and to make any findings of fact and to report the same to the Court.

Done at Miami, Florida, this 19th day of July, A. D. 1935.

HALSTED L. RITTER,
Judge.

On the 22nd day of July, A. D. 1935, there was filed before the said Master, a Stipulation in words and figures following, to-wit:

STIPULATION.

(Title Omitted.)

It is stipulated, by and between Counsel for the Plaintiff and Counsel for the several defendants who have filed Answers in this cause, that, for the purpose

of saving time and expense, instead of taking over again, before the Special Master in this cause, the evidence heretofore taken before the Commissioner in the case of United States of America, ex rel Brown-Crummer Investment Company, Petitioner, vs. Town of North Miami, formerly known as the Town of Miami Shores, etc., et al., Respondents, in the United States District Court for the Southern District of Florida, No. 1717-M-Law, that all of the said evidence, oral and documentary, shall be considered re-taken before the Special Master, and that the Special Master in this cause shall reduce the said oral evidence to narrative form and omit all objections, arguments, and rulings of the Commissioner.

110 It is further stipulated and agreed that the Counsel for any of the parties to this stipulation may argue before the District Judge and before any other Court to which this cause might be taken, any objections to any of said evidence, in the same manner and to the same extent as if the objection had been made before the Special Master and the Special Master had ruled thereon.

Dated at Miami, Florida, this July 22, 1935.

GILES J. PATTERSON,
Solicitor for the Plaintiff.
HENRY K. GIBSON,
Solicitor for Defendant, Normandy Beach Development Company.
J. JULIEN SOUTHERLAND,
LOFTIN, STOKES & CALKINS,
By JNO. P. STOKES,
Solicitors for Defendant, Ocean Beach Heights, Inc.,
PATTERSON, BLACKWELL & KNIGHT,
By T. J. BLACKWELL,
Atty. for Town of N. Miami, Def.

On the 17th day of October, A. D. 1935, Special Master's Report of Testimony was filed, in the words and figures following, to-wit:

SPECIAL MASTER'S REPORT OF TESTIMONY.

(Title Omitted.)

To the Honorable Halsted L. Ritter, Judge of the Above Court:

Pursuant to an Order of Reference heretofore entered in the above-styled cause, wherein and whereby said cause was referred to the undersigned as Master in Equity for the purpose of taking such testi-
111 mony as might be introduced by the respective parties herein, and reporting the same to this Court, together with the Master's Findings of fact thereon;

It, appearing from the files in this cause that the same is now properly at issue, upon the Bill of Complaint and Answers interposed by Defendants, Town of North Miami, Ocean Beach Heights, Inc., Normandy Beach Development Company, and E. B. Leatherman;

I therefore beg to report that I sat in my office, 815 Olympia Building, in the City of Miami, Florida, on Monday, July 22nd, A. D. 1935 at 2:00 o'clock P. M., and therefore the following proceedings were had:

Present:

J. W. Donahoo, Esq., Counsel for Plaintiff.

T. J. Blackwell, Esq., of Counsel for Defendant, Town of North Miami.

Henry K. Gibson, Esq., Solicitor for Normandy Beach Development Company.

J. Julien Southerland, Esq., and N. J. Rosenstein, Esq., of Counsel for Defendants, Ocean Beach Heights, Inc.

Thereupon, all the parties appearing before the Master at this Hearing, through their respective Counsel, filed with the Master, a written Stipulation in which among other things, it was agreed that all of the evidence, both oral and documentary, heretofore taken before the Commissioner in that certain cause, styled United States of America, ex rel, Brown-Crummer Investment Company, Petitioner vs. Town of North Miami, et al., Respondents, in the United States District Court for the Southern District of Florida, bearing Number 1717-M-Law, should be considered as retaken before the Master in this cause, and that the Master should reduce said oral evidence to Narrative form, omitting all objections, arguments, and rulings of the Commissioner. Said Stipulation provided as follows:

That, any of the parties hereto might argue before the District Judge, and before any other Court to which this cause might be taken, any objec-
112 tions to any of said evidence, in the same manner and to the same extent as if the objection had been made before the Master, and the Master had ruled thereon.

Pursuant, to the aforesaid Stipulation, the Oral Evidence heretofore taken before the Master as Commissioner of this Court in that cause lately pending in this Court, bearing Number 1717-M-Law, in narrative form is accordingly set forth as follows:

J. E. MARCOUX, a witness called on behalf of Plaintiff, under date of July 12th, A. D. 1932, under Oath, testified as follows:

That he was City Clerk, Town Clerk, Treasurer, and Assessor of the Town of North Miami; that he was

familiar with the assessed valuation of property in said Town; that he had prepared a statement of the assessed valuation of the real estate in said town, itemizing the property east and west of Bay Biscayne; that the total assessed valuation of all property east of Bay Biscayne as of April 1st, 1931 was $3,390,-558.00; that as of the said date, on April 1st, 1931, the total assessment of all property in the Town of North Miami was $4,803,145.00; that the total assessed valuation of the property in said Town lying west of Bay Biscayne as of said date, was $1,763,587.00; that the total assessed valuation of all property lying east of the Bay, represented approximately 63% of all of the property assessed for taxation lying within the whole Town; that said Town was then collecting taxes on said assessed valuation; but that no new levy had been made in the year 1931-1932 to pay the judgment theretofore procured by Plaintiffs; neither were any funds available at that time for the payment of such judgment; that the Town owned its own Town Hall, and its own Water Plant, and in addition thereto, it also owned two trucks, one automobile and some furniture. Witness further testified that he had lived in the Town since the month of November, 1924, that he was one of the Town incorporators; that to his knowledge, the United States Marshal had never levied an execution on anything belonging to the Town to satisfy the judgment of Plaintiff; that the Town owned no real estate except the properties upon which the Town Hall and the pumping station were
113 . . located; that this land consisted of approximately one parcel, comprising 600 square feet, most of the ground being occupied by buildings; that the truck owned by the Town for the collection of garbage was purchased in the year, 1929 at a cost of $1400.00; that the Town used a fire-engine, but at the time, owed thereon, the sum of approximately $8,-000.00; that other items of fire apparatus then owned out-right and used by the Town, consisted of a little booster truck and small Chevrolet car;

That the distance from the Town Hall by automobile to the closest point on the Atlantic Ocean in the affacted territory is 5½ miles; that the territory east of the Bay had received definite benefits such as police protection, street repairs, and garbage collection; that in such territory, generaly, the Town of Miami Shores caused the garbage to be collected once a week, and at the Surf Club, it caused the garbage to be collected every other day; that the police protection consisted in assigning a specal patrolman, during the winter-time, and that in the summer-time, that part of the Town was also patroled; that the Town only had one policeman and that he never went into the territory east of the Bay; that they never built any streets over there, but the Town did make repairs on streets already installed; that the witness personally saw these street repairs being made; that such repairs were made in different places, in and around the Surf Club, and on the street directly West of the Surf Club, and on the approaches to the bridge leading to Indian Creek Golf Course; that such repairs were made in the years, 1928, 1929, and 1930; that the Quo Warranto suit was filed in August, 1929, and that these repairs were made after that; that at the present time, that is to say, July 21st, 1932, J. H. Gribble, as Tax Collector of the Town was attempting to collect taxes from the territory East of the Bay; that tax payments were then being made; that the witness thinks that the Town authorities know all about the Judgment of Ouster; that circulars were being sent out by the Tax Collector to tax payers east of the Bay; advising such tax payers that if the taxes were not paid they would become delinquent
114 on a day certain and would then be subject to sale on September 5, 1932; that said circular letters had been sent out since July 1st, 1932; that such circular letters were sent to all the tax payers and including those East of the Bay;

That when the Town was incorporated, the 79th Street Causeway had not been opened; that the build-

ing on the ocean, known as the Surf Club is approximately seven miles from the Town Hall of Miami Shores, by automobile; that a majority of the population of the Town lives within a radius of two miles of the Town Hall; that said population numbers around 1500, but that when the town was incorporated, the population was about 2500; that the witness estimates the Town's population at the present time as being 1500 was based upon the last government census; that it is difficult to figure the permanent population of the Town for the reason that a number of the people made their winter homes in said Town and also maintain their voting residence in the Town; that at the present time only 150 people live East of the Bay, so that 90% of the population reside west of the Bay; that while the Town of Miami Shores is composed of five communities, the people in such communities all live within a radius of two miles of the Town Hall.

That witness has been a Town officer since February 5th, 1932; that he knows for what purpose the money obtained from the sale of the Bonds was used; that such money was actually used in the construction of the Town Hall, and in the building of the Town water plant; the construction of streets, side-walks, fire-wells and sewers; the purchase of fire-equipment; and in the work of clearing out swamps and eradicating mosquitoes; that the clearing of the swamps and mosquito eradication work was exclusively on the property east of the Bay; that other expenditures from the proceeds from the sale of these Bonds consisted in the construction of the said Hall, the purchase of fire-equipment, and installation of a water system, including water-mains. That all of these water-mains were installed on the property west of the Bay, and that there has never been any water service furnished by the Town of North Miami to any property east of the Bay.

115 That after the date of the Judgment of Ouster no town policeman was assigned to the territory

east of the Bay, but that before the rendition of said Judgment, there was a policeman assigned to patrol the property east of the bay and that such policeman was paid by the Town of North Miami; that in addition, one of two policemen were paid by the Surf Club; that before the Judgment of Ouster, a Town policeman by the name of Bennett, patrolled the property east of the Bay, day after day, and the Town paid such policeman; that this was the custom since the incorporation of the Town and up to the time of the Judgment of Ouster was entered.

That since the Town was incorporated and up to date, it was always necessary to go outside the Town Limits in order to get to any of the property which was included East of the Bay.

That no fire-wells were installed east of the Bay.

That the Town spent the sum of $6000.00 for mosquito eradication work on the territory east of the Bay; that this work was performed somewhere on Tatum's property.

When this witness was asked whether or not he was interested in seeing plaintiff win this suit, his answer was as follows:

"If the result of the suit would invalidate the whole issue, I would like to see them lose, if the result of the suit would saddle the burden of all the bonds on the west side of the Bay, I would like to see them win."

That the total outstanding bonded indebtedness of the Town was approximately $270,000.00.

That the town was then attempting to collect delinquent taxes for the year 1931, such taxes having become due and payable in November, 1931, which date was prior to the date of the Judgment of Ouster and that such delinquent taxes for said year were accordingly earned prior to the rendition of the Judgment of Ouster; and that the Town authorities in-

tended to continue to levy taxes on the property east of the Bay for the purposes of paying the bonds.

That no one living in the territory east of the Bay objected to or filed any objections to the incorporation of the Town.

116 That the Town authorities intended to continue the levying of taxes upon the property east of the Bay, omitting from the budget, and not levying any taxes against such property located east of the Bay, for municipal services, such as fire protection, garbage, etc.

In other words, that the Town authorities intend to continue assessing the property east of the Bay with its proportionate share of the sums necessary to meet the outstanding bonds at their respective maturities, and to pay the proportionate share of the government expenses incident to the collection of said taxes.

Thereafter, on the 29th day of July, 1392, the witness, J. E. MARCOUX, being recalled for further direct examination, in substance testified as follows:

That he was familiar with the records of the Town of Miami Shores and in particular that he was familiar with such records showing the issuance of building permits by that Town. The witness then identified carbon copies of several building permits issued by said Town and the same were thereupon, over objections of defendants, introduced in evidence and marked, collectively, Plaintiff's Exhibit No. 5.

Thereupon, Plaintiff rested his case.

Thereafter, under date of August 15th, 1932, one W. H. WEBB, a witness called on behalf of Intervening Respondents, testified, under oath as follows:

That he was a civil engineer and had been employed in that capacity by Normandy Beach Development

Company for the past seven years; that he was familiar with the territory east of the Bay, lying north of the City of Miami Beach and extending up to Sunny Isles Casino; that to his knowledge that territory had received garbage and trash collections; that no pavements were ever constructed by the Town of Miami Shores on any of the property lying east of the Bay. That he had, after checking the speedometer on his car for accuracy, measured the distance from the Surf Club to the Town Hall of Miami Shores over a route beginning at the Surf Club and continuing through Sunny Isles and through Fulford to the Town Hall,
117 and that he found that distance to be 9.7 miles; that in like manner, he had measured the distance from the Town Hall, over what he described as the south route, and that he found this distance to be 10.4 miles; that in both instances he took the shortest practicable route. That in traveling the north route, he had to pass through the Town of North Miami Beach, before reaching his destination; and in traveling the south route, he had to go through portions of the Cities of Miami and Miami Beach before reaching his destination.

And, thereupon, one, WALTER C. ENSIGN, a witness called on behalf of Intervening Respondents, being first duly sworn, testified as follows:

That he was manager for Normandy Beach Properties, and Normandy Beach Development Company, and also assistant secretary of Normandy Beach Development Company, having held his position with the latter corporation since the early part of the year, 1924; that the sub-division known as Normandy Beach, and owned by Normandy Beach Development Company is located within the limits of the Town of North Miami.

That his first knowledge, (as well as the first knowledge of his corporation, Normandy Beach Develop-

ment Company), of the fact that the territory east of the Bay had been included within the limits of the Town of Miami Shores was in the Fall of the year, 1926, at which time witness was requested by representatives from the Miami Shores Chamber of Commerce to furnish a list of property owners in Normandy Beach sub-division; and that shortly thereafter, a map was exhibited to witness showing the corporate limits of the Town of Miami Shores and including the sub-division known as Normandy Beach; that, thereupon, after consulting with the president of his corporation, witness discussed the inclusion of the property within said Town limits and through the Law Firm of Clark and Clark, said corporation filed its application for an injunction against the tax collector of the Town of Miami Shores to prevent that official from offering for sale tax certificates on lots in Normandy Beach sub-division, upon which taxes for the year, 1926, had been levied by said Town of Miami Shores;

118 that thereafter, said Town canceled their levy for the 1926 taxes, and started the levying of their taxes with the calendar year, 1927; that thereafter, witness' corporation joined with Tatum Bros. in an effort to get the property east of the Bay out of the Town of Miami Shores; effort being unsuccessful, witness, on behalf of his corporation, then employed Henry K. Gibson, Esq., his attorney, and said attorney, after an investigation, instituted through the Attorney-General of Florida certain Quo Warranto proceedings, which, as witness was advised, resulted successfully for plaintiffs in that connection.

That at no time did Normandy Beach Development Company acquiesce in the inclusion of its sub-division within the corporate limits of the Town of North Miami, but on the contrary, verbally protested such inclusion.

That he had no knowledge of the sale or issuance of any of the Bonds in controversy until after the institution of the Quo Warranto suit.

That he had measured the distance from the Surf Club to the Town Hall of Miami Shores and that such distance over the north route was 9½ miles; that he had also measured such distance over the south route and found the same to be 9.3 miles; that in taking both measurements, he had traversed the shortest practicable routes; that in traveling the north route, it was necessary for him to go through the Town of North Miami Beach, before reaching the Town Hall of Miami Shores; that in traveling the south route, it was necessary for him to go through the Village of Miami Shores, the City of Miami, and the City of Miami Beach before reaching his destination.

That at the time the Town of Miami Shores was incorporated, houses existed around the present location of the Town Hall; that these houses still exist in that locality; that the Town Hall of the Town of North Miami is located on a road one-half mile west of the old Arch Creek Railway Station; that the Old Dixie Highway, as originally laid out, runs in front of the Town Hall; that the Town Hall is approximately a mile and a half west of Bay Biscayne.

That Normandy Beach Development Company had never paid any taxes levied against its property by the Town of Miami Shores; that individual property owners in Normandy Beach had paid such taxes; that the property owned by witness' corporation had received no municipal benefits from the Town of North Miami with the exception of garbage and trash collection for some three or four months in the summer of 1930; that the fire department of the Town of North Miami on two occasions refused to respond to calls and the City of Miami Beach thereupon sent its fire equipment to the property.

119

That witness was familiar with the territory east of the Bay, on or about March 1, 1926, and that at that time less than 12 people were living in said territory.

And thereupon, one, L. H. BROWNING, called as a witness for Intervening Respondents, testified, under oath, as follows:

That for two years he had held the office of Tax Collector of the Town of Miami Shores and that prior to that time, he was employed as Director of Mosquito Control; being such Director during parts of the years, 1930 and 1931; that the sum of $5,000.00, or possibly, $6,000.00 of the proceeds of the Bonds issued, was voted for mosquito control; of which sum, approximately $3,500.00 was spent under the supervision of witness; that equipment for mosquito control was purchased, and that exclusive of the cost of said equipment, the sum of around $1000.00 was spent for mosquito control on the property east of Biscayne Bay; that most of the mosquito control work was done on a stretch of property on the east side of the Bay known as Tatum's Ocean Beach Park; that the work was performed by day-labor at a cost of approximately $1000.00; that it was undeveloped territory, and that no one was living thereon, either then, or thereafter; that it was a breeding place for mosquitos and for that reason that particular work was performed in that particular section; that the idea was to eliminate breeding places of mosquitos, which places would affect the territory east of the bay as well as the territory west of the bay; that at the time the work was done, Indian Creek Golf Club and the Surf Club were not in existence; that no one in particular asked that the work be done, but it was actually performed under the supervision of witness, and after a complete survey by representatives from the State Board of Health.

120 Thereupon, CHARLES J. HANNOCK, under oath, testified, in behalf of Intervening Respondents, as follows:

That he was a civil engineer by profession and held the office of County Surveyor of Dade County, Florida,

having served in that capacity for the past three and a half years; that he had followed his profession in Dade County since the Fall of the year, 1914; that he had performed considerable work on both sides of Bay Biscayne; that he had been engineer, or contractor, on nearly every piece of development from Carl Fisher's north line in Miami Beach to as far north as Hollywood, Florida; that he participated in a survey upon which the entire upper beach development is laid out; that he was contractor and built the streets in what is known as Normandy Beach, North; that he was engineer for Altos del Mar, 4, 5, and 6, and in what is now known as Ocean Beach Heights; that he was also engineer for Baker's Haulover Commission and represented all interest owned by Tatum Bros. between Baker's Haulover and Sunny Isles.

That he was familiar with the limits of the Town of Miami Shores, now North Miami, when said town was incorporated; that the south line of said Town is coincident with the north line of the City of Miami Beach; and that the north line of said Town is coincident with the south line of the Harry B. Graves' properties; that that part of the town of North Miami lying east of the Bay is comprised between the north line of the City of Miami Beach, and the south line of the H. B. Graves' property at Sunny Isles; that Ocean Beach, Altos del Mar, 4, 5, and 6, Ocean Beach Heights, and the Tatum Bros. property, all lie within that territory; that the area of the Town of Miami comprises about 16½ square miles; that the area west of Bay Biscayne comprises about 12-3/4 miles, and that the actual area of the land east of Bay Biscayne comprises about 1.83 miles.

That, according to map measurements, the distance from the City Hall of the Town of North Miami to the Surf Club via Fisher's Canal is 8-3/4 miles and by way of the 79th Street Causeway, is 9¼ miles; that when the town of Miami Shores was incorporated, there were not more than ten buildings erected in the

territory east of the Bay; that at the present
121 time (August 15th, 1932) there were not more than 25 such buildings.

That in February, 1926, he was familiar with the physical condition of what is now known as Indian Creek Club Island; that there were two of these islands both covered with Mangrove growths and that neither of these islands was habitable; that via Fisher's Canal, it is a distance of 10 miles from the Town of North Miami's City Hall to Indian Creek Golf Club and a distance of about 10½ miles by way of the 79th Street Causeway.

Witness further testified that he was familiar with the location of the Federal Intercoastal Waterway in Biscayne Bay and with the location of other channels used for navigation in the north end of Biscayne Bay; that these channels run just west of the Indian Creek Golf Club and are used for navigation.

Witness also testified that he was familiar with the condition of Ocean Beach Heights joining Baker's Haulover as of February. 6, 1926, and that upon such date, said property was a mangrove swamp with no houses thereon;

Witness further testified that he was also familiar with the territory west of the Bay in February and March of the year, 1926, and that such territory was between Biscayne Park Estates and what was formerly known as the Village of Arch Creek; that it was traversed by the old Dixie Highway.

And thereupon, one, S. W. RICHARDSON, on August 15th, 1932, under oath, testified on behalf of Intervening Respondents as follows:

That he had been a civil engineer in Dade County, Florida, for the past ten years; that he was familiar with the property east of the Bay, lying between the north line of the City of Miami Beach and the South

line of Graves' property (Sunny Isles Casino); that he had performed considerable work over that territory and had lived in that locality for several years; that he had lived in a district just a little south, known as Normandy Beach, South, since the early part of the year, 1926, and that in fact he had been living in that general locality for the past ten years; that he was familiar with the property lying within the Town of North Miami; that he was familiar with the
122 property east of the Bay, and lying within the limits of the Town of North Miami; that on or about the 5th day of February, 1926, within that territory, there were nine dwelling houses, one garage apartment, and one garage; that at the present time (August 15th, 1932), there were in that territory, 21 dwellings, one garage apartment, the Surf Club and Indian Creek Club buildings; that some of these buildings were not occupied at all; that in the month of February, 1926, six or seven of the buildings were occupied; that of these buildings, less than half are occupied the year round; that the Indian Creek Golf Club and Surf Club derive their water supply from the City of Miami Beach; and that this is true as to Ocean Beach Heights; that this last-named place derive their electric supply either from the Town of Dania, or from the City of Miami Beach; that the Town of Miami Beach did not install or maintain any streets on the property owned by Indian Creek Golf Club; that telephone service at Normandy Beach and Indian Creek Golf Club is obtained through the Miami Beach Exchange, and that telephone service to that portion of the Town of Miami Shores, lying west of the Bay is obtained from an exchange on the mainland locally known as Edgewater.

That witness did not know of any improvement of any kind ever made by the Town of Miami Shores in and about the territory east of the Bay.

Whereupon, J. JULIEN SOUTHERLAND, being duly sworn, testified on behalf of Interveners, as follows:

"I am Secretary of Ocean Beach Heights, Inc., and also Director. This corporation, one of the defendants in this cause owns the property adjoining Baker's Haulover on the South consisting of approximately 250 acres extending from Atlantic Ocean to Biscayne Bay, and 4400 feet South from the South line of Baker's Haulover Commission property, a very small part of which, to-wit, 12 lots on the ocean front are platted as lots and the balance of which is acreage undivided and undeveloped. There are no houses on this property and residences and there never have been. This property is within the corporate limits of what purports to be the Town of Miami Shores when it was organized and up to the time of the entry of
123 judgment by the Circuit Court for the 11th Judicial Circuit of Florida to the effect that the property East of Biscayne Bay was never properly part of the Town of Miami Shores.

The Ocean Beach Heights acquired this property in June, 1929, and ever since that time have denied the legal existence of the Town of Miami Shores now North Miami, have denied that their property is or ever was properly a part of the Town of Miami Shores now North Miami and have refused to pay any taxes to the said town and have never paid any taxes to the said town, and the predecessors in interest of Ocean Beach Heights, Inc., have never paid any taxes to the Town of North Miami or the Town of Miami Shores on this property. The Ocean Beach Heights, Inc., did not recognize the legal existence of the Town in taking out a building permit for the reason that the Building Inspector of this town came to my office in the First National Bank Bldg., in Miami and exhibited to me, the Ordinance of the alleged Town requiring building permits and our employees were

threatened with arrest unless the building permits were taken out in the Town and under those conditions which we considered duress, we took out the building permit."

Then, J. Julien Southerland, under cross-examination, further testified as follows:

That, Robert C. Graham, James Q. Goudie, S. M. Tatum, B. B. Tatum, and J. Julien Southerland were the Directors of Ocean Beach Heights, Inc., that Robert C. Graham was President of that corporation, James Q. Goudie and S. M. Tatum, Vice-presidents, that J. Julien Southerland was secretary.

That, he could not recall the name of the building inspector, but that officer went on the property where some men, employed by Ocean Beach Heights, Inc., were working and demanded a Building Permit; that when advised no permit had been taken out, the Inspector threatened this man with arrest unless the permit was taken out within 24 hours; that witness then called the Building Inspector over the telephone to come to witness' office and bring the Town Ordinance with him, which was done; that witness was then advised by the Inspector, that the Ordinance requiring
124 the taking out of Building Permits was going to be enforced to the letter; that at the time witness did not recognize the existence of the Town of North Miami, nor did witness ever recognize the existence of said Town; that on behalf of his corporation, he decided to take out the Building Permit because it was cheaper so to do ; that witness was not positive whether the said Building Permit was secured in the year, 1929, or the year, 1930.

And Thereupon, under date of September 12th, 1932, James A. Dixon, Esq., of Counsel for Respondents, Surf Hotel Corporation and Creek Realty Company, requested that the time for taking testimony before

the Commissioner be extended until October 1st, on account that a material witness was out of the jurisdiction of the Court and would not return for several days. Mr. Dixon then stated that this material witness was one ALFRED BARTON, who was an officer of Surf Hotel Corporation, and stated further that if Mr. Barton were brought before the Commissioner, and duly sworn, his testimony would be to the following effect:

That he is an officer of Surf Hotel Corporation and of its lessee Surf Club, Inc., that in connection with the building permits which the plaintiff has introduced in evidence relating to work upon the property of the Surf Hotel Corporation, or Surf Club, Inc., that he gave definite instructions to the contractors upon whose application these permits were issued not to make application for such building permits for the reason that Surf Hotel Corporation and Surf Club, Inc., did not recognize or admit the legal existence of the Town of North Miami or Town of Miami Shores and especially did not recognize that said Town or any of its officials had any right, jurisdiction or authority over the property of these interveners and that if the said Contractors applied for said building permits, they did so without the knowledge, consent and permission of the defendant, Surf Hotel Corporation and Surf Club, Inc.

That he has caused to be ejected from the premises of the Surf Club, Inc., or Surf Hotel Corporation certain persons claiming to be Town Officers of the Town of Miami Shores; that said officers of said Town claimed to be officers and came upon said
125 premises making demands for bribes and stating that unless they were furnished with certain monetary considerations they would take such action as would embarrass the occupants of the premises; that he informed the said persons that at the time of said ejection that neither the Surf Hotel

Corporation or Surf Club, Inc., recognized any right, power or privilege of said persons as to the property of the defendants; that they were trespassing upon said property; that the cost of procuring the building permits which have been introduced in evidence relating to these defendants was rejected by Surf Hotel Corporation and Surf Club, Inc., in the accounts of the said contractors and that the said interveners refused to pay the costs of said building permits or any of them."

It was thereupon agreed, by and between J. W. Donahoo of Counsel for Plaintiff and James Dixon, Esq., of Counsel for Respondent, Surf Hotel Corporation, and Creek Realty Company, that the said respondents might be allowed to take the deposition and/or affidavit of Mr. Alfred Barton, as officer of the Surf Hotel Corporation before the Commissioner heretofore appointed as such in this cause, and that said affidavit and/or deposition should contain in substance the following testimony:

"That the said Alfred J. Barton is an officer of Surf Hotel Corporation; that the building permits which have been introduced in evidence and made a part of the record in this cause relating to Surf Hotel Corporation and Surf Club, Inc., said Surf Club, Inc., being the lessee of Surf Hotel Corporation, were obtained by the Contractors upon whose application they were issued contrary to the directions of the said Surf Hotel Corporation or Surf Club, Inc., and that said applications were made and said permits were issued without the knowledge, consent or permission of the said Surf Hotel Corporation or Surf Club, Inc., that the Surf Hotel Corporation or Surf Club, Inc., refused to pay the amount of the charges for said building permits in its settlement with the contractors for the work done by said contractors; that the said Surf Club or Surf Hotel Corporation had ejected from the

premises occupied by same certain persons claiming to be officers of the Town of Miami Shores or Town of North Miami for the reason that the said
126 Surf Hotel Corporation or Surf Club, Inc., refused to recognize that the said persons, if they were officers of the said Town, had any right, power or authority, towards the lands of the said interveners and informed the said persons that they were trespassers upon the said property, that the said deposition shall be by the plaintiff and these interveners considered as having been taken within the time limited for taking testimony in this cause and is taken subject to the rights of the plaintiff to cross-examine the said Alfred Barton and to object to his testimony upon any and all grounds that the plaintiff may deem necessary other than the ground that said testimony was not taken within the time limited by the previous orders to the Court."

In addition to all of the foregoing oral testimony of the witnesses for the respective parties as above outlined by the Master, Counsel for the respective parties in said cause, United States of America, ex rel, Brown-Crummer Investment Company, a Kansas Corporation, Petitioner vs. Town of North Miami, formerly known as Town of Miami Shores, et al., Respondents, lately pending in the United States District Court in and for the Southern District of Florida, Miami Division, Number 1717 M-Law, introduced certain documentary evidence which were admitted in evidence and marked by the Commissioner as follows:

Plaintiff's Exhibits were respectively marked 1 to 5 both inclusive; and Respondents Exhibits were respectively marked A to F both inclusive. All of the above-mentioned Exhibits were duly filed in evidence in said cause No. 1717 M-Law and are now on file in the Office of the Clerk of said Court.

(The above mentioned Exhibits are copied in full at pages 283 to 367 of this Transcript.)

127 Whereupon, L. H. BROWNING, having been called as a witness on behalf of plaintiff, and being by me first duly sworn, testified as follows:

Direct Examination.

By John W. Donahoo, Esq.:

Q. What is your name?

A. L. H. Browning.

Q. What is your occupation, Mr. Browning?

A. I am employed by the Town of North Miami.

Q. How long have you been so employed?

A. In my present occupation, just about a year.

Q. And, what is your present employment?

A. I prepare the data necessary to foreclose any delinquent taxes.

Q. How long have you lived in the Town of North Miami, or Miami Shores?

A. I have lived there since 1926.

Q. Have you lived in this Town since the date of incorporation?

A. Well, I was not a resident of the Town at the time of the incorporation. I was back and forth until April, 1926, when I took up my permanent residence. Prior to that time, during November, 1925, until April, 1926, I was there two or three days each week.

Q. Did you live at Miami Shores or North Miami in 1926?

A. Yes, sir.

Q. What did you mean by stating: 'I was not a resident'?

A. I had not moved my family there until April. At that time I was a resident of the State of Florida,

but I was not a legal resident of the State of Florida until some time in October, until I was in the State a year.

Q. Are you familiar with the property that comprises the Town of North Miami?

A. Yes, sir.

Q. Is the property which comprises the Town of North Miami, known as the property east of the Bay of Biscayne, subdivided?

A. Yes, sir. It was in 1926 at the time of the incorporation of the Town with the exception, I would say, not to exceed 400 acres. The entire Town was including the property east of the Bay and West of the Bay. I might be mistaken in the acreage, but it was between 300 to 400 acres.

Q. Was that land which comprises the
128 property east of the Bay and West of the Bay agricultural land?

A. A large part of it was in no way agricultural land. The lands laying on either side of the Bay were really wild lands, partly submerged, but there were parts of it being filled in by dredging and these parts were sold as lots and hundreds of lots sold to persons were under 18 inches to two feet of water.

Q. What was the population of the Town of North Miami during this development at that time, and did they expand to the City of Miami in this territory?

A. The Town of North Miami, was in 1926, we had then about 2500 residents there. They predicted that within the next year there would be 150,000 within the territory of the town; that Miami was going to expand; and that Miami Beach was growing north rapidly; and the intentions of the incorporators was to incorporate so that the City of Miami could not take up their land; and thus do away with the high taxes that would be paid in the City of Miami and City of Miami Beach.

Q. Mr. Browning, will you please state the type of property that was owned by the Tatum Company.

Was it agricultural property or building property, or rural property or just what type of property?

A. It was suburban property. It was subdivided into lots, streets were laid out, and developments were started, sidewalks were put in and lighting was put in what is known as Tatum's Altos del Mar, 4, 5, and 6, and there was dredging in the Bay. There was an area south of Baker's Haulover Cut being developed which included about 125 to 150 acres. The Bayfront was under development and being filled in. Then right north of Baker's Haulover Cut was another development that was owned by the Tatums', was subdivided in about 56½ one hundred foot lots, which extended from the ocean to the Bay, and the property known as Normandy Beach North Development was all laid out in lots, streets were in, and bridges from the little islands, and houses were being built there and the property known as Miami Shores Island was partially submerged, lying in Biscayne Bay close to the eastern shore, and it had been platted and subdivided, although no actual development was started. Dredging had been started on the island in 1926. Dredging and piledriving was started on the causeway which
129 was from the mainland to the Miami Shores Island and from Miami Shores Island to what is known as Altos del Mar. When this causeway was going along, that was one of the outstanding points; that the Miami Shores, or Shoreland Company was building the causeway. The 79th Street Causeway had not been built; the work had been started on it about the middle of April, 1926. At the time they were building the 125th Street Causeway, and still today, there are probably 500 concrete piles stored at the west end of the causeway that were to be used in its final construction. The work done on the causeway was obliterated by the 1926 hurricane, and at the time one of the dredges for the Shoreland Company was destroyed. Of course, we who were here in 1926, know the attitude in general as to the ocean front, or anything near the ocean front.

Q. What was that attitude?

A. Everyone insisted that the entire ocean front would be built up solid within the next two years. I think at the time the Town was incorporated or shortly after, the Tatums' were advertising that they were part of the Town of Miami Shores, hooking this up with the development of the Town and taking advantage of millions of dollars that Miami Shores had been spending in national advertising.

By J. Julien Southerland, Esq.:

I move that the witness' testimony with regard to Tatum Company be stricken from the record on the grounds that it is hearsay.

By the Master:

That part of the witness' testimony concerning the Tatums' taking advantage of advertising by Miami Shores is stricken.

Exception noted.

By J. W. Donahoo, Esq.:

Witness excused, your witness:

Cross Examination.

By J. Julien Southerland, Esq.:

Q. I understood you to say that there were 2500 residents of the Town of Miami Shores?

A. There were 2500 people living there, about half the people were legal residents of Florida and came there the last part of 1925 and had been in the State of Florida about a year legally so that they could qualify as voters in the State.

Q. It is a fact that there were only thirty-
130 eight people at the time of incorporation at the meeting?

A. No, sir.

Q. How many were there?
A. One hundred there and out of that amount about thirty-eight—thirty-eight electors who could vote.
Q. Were you present at that meeting?
A. No, sir, I was not.

By J. Julien Southerland, Esq.:
I move that all of the testimony be stricken as hearsay.

By the Master:
The whole of the answers stay.

Exception noted.

By J. Julien Southerland, Esq.:
Q. Where was Miami Shores Island located?
A. Miami Shores Island, as we know it, lays directly west of what is known as Altos del Mar 4, 5, and 6, and north of the North Beach Development. This is really two islands. There is a little water-way that separates the two islands. There is a smaller island to the north which is included in this tract. The island from the main-land lays directly opposite what would be 121st Street about up to 125th Street.
Q. Could any one possibly live on this?
A. No one could possibly live on it.
Q. No one living on it then?
A. No, sir. I do not think anyone is making a residence on that island.
Q. The south one of these island constitutes a Golf Club?
A. Yes.
Q. The north one is still mangrove swamp?
A. No. It is not a mangrove swamp.
Q. What is it?
A. It is a partially cleared island.
Q. Still not developed?

A. Yes. I might add that the island to the north was under development at the time, (1926) and was platted as residence property.

131 By J. Julien Southerland, Esq.:
I move to strike the witness' answer as it is not responsive.

By the Master:
Let the answer stand as given.

By J. Julien Southerland, Esq.:
Exception.

By J. Julien Southerland, Esq.:
Your witness.

Cross-Examination of the witness by Henry K. Gibson, Esq.:

Q. When you testified to the 2500 people, that was upon a consensus report?
A. There was no census taken at that time.
Q. And that was a rough estimate?
A. That was conceded.
Q. That was West of the Bay of Biscayne, wasn't it?
A. Well, no, there were some people living on the east side.
Q. Perhaps a half-dozen houses there?
A. I could count them.
Q. You say you were not at the meeting?
A. No.
Q. You mean, do you not, the meeting at the time the Town was formed?
A. Yes.
Q. It would be your best judgment, would it not, that in the early part of 1926, there were not over a half-dozen houses in the territory east of the Bay?

A. In my best judgment, there weren't over a half-dozen houses over there, but there was considerable more real estate activity than what a half-dozen houses showed.

Q. You understand that I am not inquiring the amount or degree of real estate activity, and I want you to answer if you know, the number of houses, if you can recall, that, early in 1926, there were not over a half-dozen houses east of Bay Biscayne in the territory incorporated.

A. I think there were nine.

Q. Nine houses?

A. Yes.

Q. Is it a fact that even with the small number of houses existing at that time, several of them were not occupied, or, if occupied, were occupied only for a few months in the year?

132 A. Yes, sir.

Q. Were you in charge of the mosquito control work back in 1931?

A. No.

Q. What year was it?

A. I can't tell you the exact date when the first work was done by the Town.

Q. Would it refresh your memory, if I were to read from a former hearing, in which I asked you to please state if you were Director of Mosquito Control during the years 1930 and 1931?

A. That is absolutely wrong, I was tax collector in the Town of North Miami in 1930 and 1931.

Q. I would like to refresh your recollection by showing that you stated in a former hearing that you were Tax Collector in 1931.

A. I was tax collector two years.

Q. When was mosquito control work done?

A. Right after the bonds were sold for that purpose. Let me think just when that was. If I am not mistaken, it was in the spring and summer of 1927.

Q. Your statement then is that you did the mosquito control work in 1927. Is that correct?

A. I am not saying the date—it was right after the bonds were sold, the work was done. It was sometime ago I don't just remember what time it was—I know the time of year it was, but the year was '27 or '28. The Town Records would verify that particular date.

Q. Did I understand you to say, a while ago, that Tatum's Ocean Beach tract was developed at that time?

A. That the territory north of Baker's Haulover was sub-divided into 56½ lots running from ocean to the Bay.

Q. No one living there at that time?

A. No.

Q. No inhabitant lives there now?

A. There are several squatters.

Q. There are no bonafide residents there now, and never have been?

A. No, sir.

Q. And the property is still undeveloped?

A. Not developed.

133 Q. When you did the mosquito work there several years ago, any one living there?

A. No human inhabitant.

Q. It was undeveloped territory, wasn't it?

A. Yes, undeveloped territory.

Q. How many years have you been working and held a position with the Town of North Miami, formerly called North Miami Shores?

A. I worked for approximately eight months on the mosquito control work; and served two years as Tax Collector; and I have worked now approximately a year on the foreclosure work.

Q. And you are still an employee, holding a position by authority of this Town?

A. Yes.

Q. Now, Mr. Browning, it was realized at the time of incorporation, was it not, of this particular Town, that the property east of the Bay was conceded to be

extremely valuable and that it was highly advisable to include it in the incorporation, so that it could be compelled to pay taxes?

By Mr. Blackwell:
I object to the question on the grounds that it is not in Cross.

By the Master:
Objection sustained.

Q. You testified that the 125th Street Causeway was being built, as a matter of fact, that Causeway was never built.
A. It was never completed.
Q. As far as any practicable fact is concerned, the Causeway never existed except on paper, with perhaps, a little preliminary work done, is that correct?
A. Well, I would say that it existed to the extent that it was under construction.
Q. But never built?
A. No.
Q. The construction work you speak of, was of a very small percentage of the work that would have had to be done to complete it?

By Mr. Blackwell:
I object to the question of how much work being required to build the Causeway.

134 By Mr. Donohoo:
Plaintiff joins that objection.

By the Master:
Objection is sustained.

By H. K. Gibson, Esq., to witness:
Q. Mr. Browning, you have spoken here and testified to a lot of advertising that was being done; when you testified about that large amount of advertising,

you had in mind, did you not, the advertising that took place in the year 1925?

By Mr. Donohoo:
I object to that question with reference to advertising.

By the Master:
I sustain the objection.

Exception.

By Mr. Gibson:
Witness excused.

Cross-Examination of witness by T. J. Blackwell, Esq.:

Q. Mr. Browning, did you live in Miami or in the Greater Miami Area at any time before the late Florida Real Estate Boom?
A. Before that time? No, sir.
Q. You stated at the time of the incorporation of the Town of Miami Shores, also known as North Miami, that there were 2500 people living in that area?
A. Yes.
Q. Can you state whether these people, that is the population of Miami Shores, lived within any built-up village or resident community, or whether they were scattered over the incorporated area?
A. They were scattered over the area that was incorporated in the Town.
Q. Did you know the character of land included within the incorporated limits of the Town with respect to its cultivation?
A. A part of it had been cultivated, but even the cultivated land was subdivided into lots.
Q. You mean all lots sold as platted lots?
A. Building lots, residence lots—most of them were fifty foot lots.

Q. Where was the location of this area of land that was incorporated in the Town of Miami
135 Shores with respect to the City of Miami City Limits?

A. It joined the City Limits of Miami on the south. That is, the south land of the Town joined the north land of the City of Miami.

By Mr. Gibson:

I move that this question be stricken on the ground that it is not in Cross.

By the Master:

Objection over-ruled.

By T. J. Blackwell, Esq., to witness:

Q. You state then, that this incorporated Town of Miami Shores was directly north of the City of Miami, and the City of Miami Beach; can you state whether or not, at the time you came to this area, the Cities of Miami and Miami Beach were expanding rapidly?

A. Yes, sir.

Q. This area, that was incorporated as the Town of Miami Shores, was being sub-divided, improved and sold as real estate subdivisions, I believe you stated.

A. Yes.

Q. Was that true of that entire area?

A. Practically the entire area.

Q. Is that true with respect to the lands lying east of Bay Biscayne, as well as lands west of the Bay?

A. Yes, sir.

By Mr. Blackwell:

Witness excused.

By J. Julien Southerland, Esq., to witness:

Q. Do you know as a matter of fact, Mr. Browning, that the lands east of Biscayne Bay where practically

500 acres were incorporated in this Town, were never subdivided and are not sub-divided now into building lots?

A. There is an area that I spoke of in my answer to the other question, it lies directly south of Baker's Haulover Cut between what is known as Alton Del Mar, 4, 5, and 6; in 1926, that was not sub-divided in building lots, but since that time the area has been subdivided.

Q. You refer to the 12 lots on the Ocean front?

A. Yes. The understanding was that these twelve lots that you speak of on the Ocean front
136 were twelve estates, each to contain a home and the rest was to be owned jointly as a private estate.

Q. The property you refer to consisted of some 255 to 260 acres; was unplatted, undeveloped and part mangrove swamp in 1926.

By J. Julien Southerland, Esq.:

Witness excused.

By N. J. Rosenstein, Esq., to Witness:

Q. When Mr. Blackwell was examining you, a moment ago, you testified that the population of the Town of Miami Shores at that time, I believe, you stated something like 2500 people that are scattered over an area that subsequently became the municipal corporation, that is, the Town of Miami Shores. Was this population scattered over that portion West of the Bay?

A. As I answered before, mostly West of the Bay. And, as I stated, nine houses on the Beach within the area.

Q. Now, also, when Mr. Blackwell examined you, you said that streets had been laid out. Had these streets been laid out in that territory West of the Bay, laid out west and east of the Bay, or in what portion of that property east of the Bay had these streets been laid out?

A. In what I suppose you could call the south part. North of Altos del Mar, 4, 5, and 6. The Ocean Drive, extending to Baker's Haulover from north of Altos del Mar No. 6, and from there on to Sunny Isles. That road is the one running right through the lots I speak of, that lay north of Baker's Haulover cut.

Q. Who laid out these streets east of the Bay?

A. The developers of the property.

A. [Q.] The developers of the property?

A. Yes, sir.

Q. Who laid out the streets West of the Bay, the developers of the property?

A. The Town did not do any of it. Streets were existing at the time of incorporation all the time.

Q. When Mr. Blackwell examined you, you testified, I believe that the Town of Miami Shores adjoined the City Limits of the City of Miami?

A. Yes.

137 Q. What City did the lots East of Biscayne Bay adjoin?

A. I am not positive whether the City of Miami Beach; or whether it extended nearly to Normandy Beach South Development. Speaking of the land east of Biscayne Bay, from Miami Beach north there may have been an unincorporated area in Miami Beach. I am not positive as to whether the two city lines were the same or not.

Q. Were these lands east of Biscayne Bay closer to the City of Miami Beach than they were to those lands west of the Bay that subsequently were incorporated in the Town of Miami Shores?

Question by the Witness to N. J. Rosenstein, Esq.:

Q. What part of Miami do you mean, the North lines?

By N. J. Rosenstein to Witness: Question.

A. Yes.

By N. J. Rosenstein, to Witness:

Q. Were these lands east of Bay Biscayne closer to Miami Beach than those lands west of the Bay?

By J. W. Donohoo:

I object to the question as it is not in Cross.

By the Master:

Objection overruled.

By the Witness:

A. Perhaps so, I don't think so. They were not any closer to Miami Beach than to the main-land.

Q. On February 4, 1926, were these lands east of the Bay closer to the north line of the City of Miami Beach than they were to those lands west of the Bay?

A. No, sir.

Q. What was the difference in distance, if you know?

A. Well, I am basing my calculation that the north line of the City of Miami Beach was known as Normandy Beach South, which would be just approximately 79th Street, to the end of the 79th Street Causeway; and from there to the south line of the property known as Normandy Beach North, is about a mile and a half. From the lands on the east side of the Bay to the main-land over the 125th Street Causeway would be a mile and a half.

Q. Over what Causeway?

A. The 125th Street Causeway which was
138 under construction at the time of the incorporation of the Town.

Q. Do you know of your own knowledge where the north line of Miami Beach extended on February 4th, 1926?

A. No, sir, I do not. My answer is on the presumption of what I said.

Q. You stated a moment ago that the Cities of Miami Beach and Miami at that particular period were extending rapidly and growing in population rapidly.

A. Yes; sir.

Q. Is it also true that land values were going up higher in price?

A. No, they were stationary in 1926, but at the time that we had the boom they were getting high, that is during the expansion.

Q. Mr. Browning, you testified that these lands east of the Bay as having been platted?

A. Yes.

Q. How did you know they were platted?

A. Well, I have consulted the Official Plats many times, and they were recorded in the Public Records of Dade County.

Q. You had occasions to examine these Plats during the period, you testified, for 1926?

A. I say I had occasion to handle them during my period of being Tax Collector for the Town. The Town has a file of those Plats in the Town Hall.

Q. In any event these plats were made by the owners of the property?

A. Yes, sir.

Re-Cross Examination.

By Mr. Blackwell:

Q. Mr. Browning, you have referred to some of this Beach property as being a mangrove swamp, what were they doing with the mangrove swamps?

A. The mangrove swamps on both sides of the Bay were in the progress of being filled-in territory and raised to such an extent that they were being raised to building sites.

Q. What kind of building sites did they consist?

A. They were dredging and filling in home sites upon the land; the lots consisted of fifty feet
139 or more.

Q. Do you know how wide the Florida East Coast Canal at the North development line between the Bay territory and main-land territory?

A. Outside width of 300 feet.

Q. Is it not a fact that the distance between the east territory, that is, the territory east of the Bay, and the main-land, or the west territory, at the north line, upon land of the Town is not more than 300 feet?

A. That is right.

Q. Then when you speak of two parcels of land being a mile and a half apart at the 125th Street Causeway, you do not mean a mile and a half?

A. Unless that would be at the widest place.

Q. Were those islands in the Bay and the Bay bottom included in the Town's incorporation?

A. Yes, sir.

Witness excused.

Thereupon, COLLINS SIMMONS, having been called as a witness on behalf of Plaintiff, and being by me first duly sworn, testified as follows:

Direct Examination.

By J. W. Donahoo, Esq.:

Q. What is your name?

A. Collins Simmons.

Q. What is your occupation?

A. Police officer at the present time.

Q. You are police officer for what Town?

A. For Miami Shores Village.

Q. How long have you been police officer for Miami Shores?

A. For Miami Shores Village, I went there on December 17th, 1932.

Q. Have you ever been employed by the Town of Miami Shores, or North Miami?

A. Yes, sir.

Q. What was the nature of your employment by the Town of North Miami?

140 A. Building Inspector.

Q. When were you Building Inspector for this Town?

A. February 1931 until February 1932.

Q. In the course of your duties as Building Inspector for the Town of North Miami, or Miami Shores, did you have occasions to inspect any property East of the Bay of Biscayne?

A. Yes, sir.

Q. Did you issue any permits on property East of the Bay?

A. Yes, sir.

Q. In issuing such permits, was a permit record kept by the Town of Miami Shores or North Miami?

A. Yes, sir.

Cross-Examination of Witness by Mr. Blackwell:

Q. During the time you occupied the position of Inspector, did the Normandy Beach Development Company make any objection to any permits issued by you?

A. They did not make any objection to the permit being issued, but did make objections to the building of one particular building and also made a request of me to condemn this building.

Q. When was this objection made?

A. The building was never completed. The gentleman who was manager of the Normandy Beach Development Company (I can not recall his name at the time, I would possibly know it if I heard it), he made the objection in this way—he said that we have a $3500 building code, nothing under $3500 in this district and gave me a copy of the building restrictions. He said this house should be torn down.

Q. When was this?

A. Along the first part of May, 1931, when he made this objection.

Q. The gentleman that was objecting to this construction that you refer to, was from the office of the Normandy Beach Development Company?

A. He was the manager, representing some party in Ohio, if I remember right. I did not keep that, it was not a matter of record. This is the only record I have.

141 Q. Were there any other complaints that you remember during the time as Building Inspector that were made by party-defendants in this cause?

A. Yes, some gentleman wanted a building torn down that was wrecked in 1926. It was on the south end of the development right next to the water-line just beginning the Town of Miami Shores. He wanted me to condemn this building, which I did condemn, but the people who took the place reinforced it and rebuilt it.

Q. Did you occupy any other official position with the Town of North Miami, or Miami Shores?

A. I was a police officer.

Q. At what time were you a policeman?

A. It was the first year the Surf Club opened that was in 1930, I believe that was in 1930. I was police officer employed by the Surf Club and paid by the Surf Club, and was police officer of the Town of Miami Shores.

Q. You were paid by the Surf Club, but from whom did you obtain your commission and execute your authority as police officer?

A. The Town of Miami Shores.

Q. How long did you serve as policeman in that capacity, and give the approximate date?

By H. K. Gibson, Esq.:

I object to the question on the ground that the Surf Club is not a party-defendant.

By the Master:

Overrule the objection to the question.

Exception noted.

By the Witness in answer to Question:

A. They opened the Club, that was, the formal opening, January 1st, 1930. I am not sure of the date, but I was there from December 15th and stayed there until April or May. I was there about six or seven months.

Q. You state in January, 1930, was that before or after you were Building Inspector?

A. That was before.

Cross Examination.

By H. K. Gibson, Esq.:

Q. When you stated that this man from the Normandy Beach Development Company had
142 conversation with you, referring to the permit, to take out to have the building torn down, was that conversation in your office?

A. It was, and in the office of the Normandy Beach Development Company. This man represented the people in Ohio.

Q. And you don't remember his name?

A. I do not. I could find it.

Q. You were just under the impression that he was the manager?

A. I know he signed papers and people came in and asked for him as manager.

Q. You went there to see him?

A. He called me and wanted to talk to me.

Q. You knew the Normandy Beach Development Company had been fighting the incorporation of that territory at that time?

A. I don't know anything about that, if there was some talk about it.

Q. You knew there was some talk in connection with that territory?

A. At that time there was something.

Q. When you did the police work there at the Surf Club, you did not attempt to do any police work except right in the Surf Club?

A. After I had gone over there, I was on duty nights. I had been sent over there and called over there at various times, and during the night time I had received calls from people who had been held up and robbed around by the ocean front.

Q. Did you make those reports at the Town Hall at Miami Shores?

A. I called the Town Hall and they went over in the Police car.

Q. Did you make trips back and forth from the Surf Club to the Town of Miami Shores every day?

A. Yes.

Q. What is the distance?

A. I think it is about ten miles.

Q. And you had to go through the City of Miami Beach, and across the 79th Street Causeway to the Miami Shores Town Hall, or through the Town of Fulford, or around that way to go over?

By Mr. Donahoo:

I object to the question on the ground that it is immaterial and irrelevant, and that it is not
143 in cross of anything brought out on direct examination.

By the Master:

Overrule the objection.

Witness in Answer to Mr. Gibson's Question:

A. You could go either way.

Q. The distance was about the same either direction, wasn't it?

A. Yes.

Q. And that distance was about 10 miles, is that correct?

A. I would say between eight and ten miles.

Q. Did you travel horseback, or—

A. By automobile.

Witness excused.

By J. Julien Southerland, Esq.:

I move that this witness' answers elicitated by questions of Mr. Donahoo which relate subsequent to the time of the filing of the Quo Warranto proceedings in the said Court in Dade County, be stricken from this record as being incompetent, immaterial and irrelevant and having no bearing on the issues in the cause.

By the Master:

Motion to strike, denied.

Exception noted.

Cross Examination.

By J. Julien Southerland:

Q. Mr. Simmons, the man you talked to about the condemning of this building, you testified was personally in charge of the office of the Normandy Beach Development Company?

A. Yes.

Q. And he held himself up to the public as manager of the property?

A. Yes.

Q. You knew him to be acting in that capacity?

A. Yes.

Q. You stated that while you were acting as special police prior to Building Inspector, you had occasion to make arrests in the territory east of the bay, is that correct?

A. Yes.

Q. Was that during the seven months' period?

A. Yes, almost every night something would happen and somebody would come up to the Surf
144 Club saying someone stole a tire, or stole their clothes, and on one occasion, we had a night and day man there.

Q. You were subject to call at any and all times, and were on duty as police of Miami Shores?

A. Yes. I was subject to call.

Q. The Surf Club was around ten miles from that territory you serviced as police?

A. No, sir.

Q. After you went on duty, you were not ten miles away from the place you were subject to call as policeman?

A. No, sir. The Surf Club—I was paid by the Surf Club for my time there, and they were enclosed. They had a fence around their property, to protect their property. The front tennis courts and practice courts had no fence, and we patrolled it and would go out and around that part, around the tennis courts and practice lots, and from there to a house just to the north of the court that we were asked to look after, and there was a house just south of the other grounds.

Q. What were your hours of duty.

A. Well, when I first went there I went on about six o'clock at night and I stayed until four in the morning, then they changed us around, we had various hours. When I first went there I was by myself, then we got another man, then we changed our hours. Then we got two more men, then they changed us again, and when they had one of their parties, or dinner parties, all of us were on until it was over regardless of the hours. There were three of us there that were police officers from the Town of North Miami or Miami Shores.

Q. All paid by the Surf Club?

A. Mr. Barton who was Secretary and general-manager had the Town of North Miami send us there. Besides myself there was another Mr. Simmons that we had there and another gentleman. All of us worked nights.

Q. You knew that the Surf Club owned that property just north of the Surf Club?

A. I do think it was later purchased by the Surf Club, but if they owned it at that time I did not know it.

145

Q. Were there any policemen paid by the Town stationed in the territory east of the Bay of Biscayne?

A. They made their regular trips through there. They were over there at least once and sometimes twice an hour. They made periodical trips back and forth all the time.

Q. What period of time are you speaking about?

A. While I was on duty over there steady. They would come by at night time, during the several months in 1930. I am not positive in what year, but it was after the Surf Club was built and completed. Well, previous to that time, I cannot say whether they patrolled the area, because I was not over there. I lived in the Town of Miami Shores, but I was not in an official capacity and I did not know just what happened on that side.

Q. How many police on the west side, do you know?

A. One, that went on days and they had one man on car duty nights; and one that sat in the Town's Hall answering calls.

Q. The police force consisted of three officers, is that it?

A. At that time, I believe it did, outside the special officers.

Q. They had one man in the office and two patrolmen?

A. Yes. They had one man also stationed that had a place of business at Baker's Haulover, a man that owned the Bait and Tackel Shop—he was a police officer.

Q. How was he paid?

A. He wasn't paid by the City that I know of.

Q. All this period of time was subsequent to and after January 1st, 1930?

A. I won't say for positive—I just don't remember whether I went in the year of 1929.

Q. But assuming that the Surf Club opened in 1930?

A. Yes, so far as I know.

Witness excused.

Thereupon, MISS E. M. AVIL, having been called as a witness on behalf of plaintiff, and being by me first duly sworn, testified as follows:

146 Direct Examination.

By Mr. Donahoo:

Q. What is your name?

A. E. May Avil.

Q. What is your occupation at the present time?

A. Town Clerk and Treasurer of the Town of North Miami.

Q. How long have you been Town Clerk and Treasurer?

A. Since April, 1933.

Q. As Town Clerk and Treasurer of the Town of North Miami, are you familiar with the outstanding bonded indebtedness of the Town of North Miami or Miami Shores?

A. Yes, sir.

Q. Miss Avil, can you state the amount of outstanding unpaid bonds of the Town of North Miami as of July 5th, 1935?

By H. K. Gibson, Esq.:

I object to the question on the ground that it is immaterial.

By the Master:

Overrule the objection.

A. $238,000.00.

Q. Please state the amount of past due bonds.

A. $107,000.00.

Q. Please state the amount of past due interest.
A. $59,013.00.
Q. Miss Avil, do you know the assessed valuation of the property west of the Bay of Biscayne?
A. Approximately $875,000.00.
Q. What levy would be necessary against this property west of Biscayne Bay to take up the interest and to pay the indebtedness?
A. About Two Hundred and six-tenths mills.

Witness excused.

Cross Examination

By J. Julien Southerland, Esq:
Q. Do you own any property in the Town of North Miami, west of Bay of Biscayne?
A. I have no property in my name.

Witness excused.

Thereupon, J. H. GRIBBLE, having been called as a witness on behalf of plaintiff, and being by me first duly sworn, testified as follows:

147 Direct Examination.

By Mr. Donahoo:
Q. What is your name?
A. J. H. Gribble.
Q. What is your occupation?
A. Tax Assessor and Collector of the Town of North Miami.
Q. How long have you been so employed by the Town of North Miami?
A. Since February 5th, 1932.
Q. As Tax Assessor and Collector of the Town of North Miami, were you familiar with all the property

lying east of the Bay of Biscayne and west of the Bay of Biscayne which is within the Town limits of the Town of North Miami?

A. Yes, sir.

Q. Do you know what amount of money would be necessary to redeem the taxes due on the property east of the Bay of Biscayne at this time?

By J. Julien Southerland, Esq.:

I object to that on the ground that it does not identify the property; that it also embraces property that does not belong to these defendants; that it is incompetent, irrelevant and immaterial because the amount of unpaid taxes, or the amount which would be required to redeem from unpaid taxes has absolutely no bearing on this case whatsoever. Further objection on the ground that there is no Paragraph of the Bill with reference to outstanding unpaid taxes on the property east of Biscayne Bay, and no allegation in the bill in which this evidence is propounded.

By the Master:

Overrule the objection.

Exception noted.

Witness in Answer to Question:

A. The principal amount is a little in excess of $184,000.00. I have not figured the interest out, but it would be about 33-1/3%, and on each tax sales certificate there would be a redemption fee of fifty cents. I have not figured that out but the principal amount is little in excess of $184,000.00.

By J. Julien Southerland, Esq.:

In order to keep the record straight I move that the witness' testimony be stricken from the record
148 on the same grounds on which the former objection is based.

By the Master:
Motion to strike denied.

Cross Examination of Witness.

By Henry K. Gibson, Esq.:

Q. I understood you to say the amount would be about $184,000.00, and interest about one-third as much. In other words, the figures you had in mind, would approximate 240,000.00 to 250,000.00 dollars. Is that correct?

A. Yes.

Q. When you mentioned these figures you assumed the property east of the Bay would be required to pay all taxes back from the present time to 1927, is that correct?

A. Those accrued taxes from those years, 1927 to 1934 inclusive.

Q. That assumes, does it not, the validity of a tax levy and collection for those years?

A. Those figures are for those taxes shown in the Tax Collectors Office in the Town of North Miami as unpaid taxes.

Q. What principal indebtedness do you still owe on the bonds?

A. Principal $238,000.00, plus interest around $59,000.00.

Q. In other words, the Town owes bonded indebtedness of $238,000.00 and interest of $60,000.00 more, approximately $300,000.00? Is that correct?

A. Yes.

Q. And yet you claim that the share of that indebtedness for the territory east of the Bay is approximately $240,000.00 to $250,000.00. Is that correct?

A. Yes. The amount of unpaid taxes on that area.

Q. So that if you were to collect, assuming, from the territory east of the Bay, it would be paying almost

all of the bonded indebtedness and interest, is that correct?

A. I don't know about that.

Q. Well, you know the difference between 300,000 and 250,000 approximately?

A. Yes.

Q. In other words, Mr. Gribble, according to your figures, assuming their correctness, the territory east of the Bay would be required to pay five-
149 sixths approximately, of all bond interest, etc., of the Town of Miami Shores?

A. I don't know how much they would be required to pay.

Q. I am assuming that this can be collected.

A. I don't have the figures as to the amount of these taxes represent bonded indebtedness.

Q. Did you not hear Miss Avil testify?

A. I heard her testify as to the amount outstanding.

Q. Amounting, approximately, to $300,000.00?

A. Yes.

Q. Then you testify that the indebtedness representing a tax east of the Bay would be approximately $250,000.00, including interest?

A. That is about the correct amount, the way it figures.

Q. I will ask you again, assuming that to be correct, the Town of Miami Shores, is, in effect, asking, is it not, that lands east of the Bay be required to pay approximately five-sixths of the entire outstanding municipal indebtedness of the Town of North Miami?

By T. J. Blackwell, Esq.:

I object on the grounds that it calls for the witness' conclusion and assumes the Town of North Miami is assessing the property east of the Bay.

By the Master:

I sustain the objection.

Exception noted.

By Henry K. Gibson, Esq., to Witness:

Q. Mr. Gribble have you made any assessment for 1935 for this property east of the Bay?

A. I have not completed it.

Q. Can you tell us how much the property owners might pay on the property east of the Bay?

By T. J. Blackwell, Esq.:

I move to strike the question on the ground that it is not in cross of anything asked on direct.

By the Master:

Sustained.

Exception noted.

By H. K. Gibson, Esq., to Witness:

Q. How much in delinquent taxes are due west of the Bay?

A. Principal amount, little better than $103,000.00.

Q. How much interest?

150 A. About one-third, about $33,000.00.

Q. On the territory east of the Bay, what were these taxes averaging a year?

A. Don't you mean a total levy for each year? It varies quite a bit. I have a report in my coat. I have four years.

Q. What does that average?

A. I have the total of $138,184.42 for four years. I can't give you the separate years.

Q. You are the Tax Collector?

A. Yes.

Q. Do you know the date of the Judgment of Ouster issued by the Court of Dade County ousting the officers from any exercise of their duties?

By T. J. Blackwell, Esq.:

I object to that question as it is not in cross.

By the Master:
Overrule the objection.

By the Witness in Answer to Question:
A. I cannot swear to the exact date. I know it was in December, 1931.
Q. And these figures that you have testified about include assessment and levies that you have attempted to collect after the Judgment of Ouster was issued, is that correct?
A. After the Ouster, yes, sir.

By T. J. Blackwell, Esq.:
Q. Do you own any real estate west of the Bay?
A. Yes. I recently purchased some.
Q. Do you own any real estate east of the Bay?
A. No, sir.
Q. Do any of the officers of this Town own any property east of the Bay?

By T. J. Blackwell, Esq.:
I object to the question as it is not in Cross.

By the Master:
Objection sustained.

Exception noted.

Witness excused.

By J. W. Donahoo, Esq.:
I tender, in behalf of the plaintiff, the Peremptory Writ of Mandamus in the case of United
151 States of America, ex rel, Brown-Crummer Investment Company, versus Town of North Miami, et al., referred to in the Bill of Complaint.

By the Master:

Without objection, the Certified copy of the Peremptory Writ of Mandamus is admitted in evidence as Plaintiff's Exhibit No. I.

Whereupon, L. H. BROWNING, having been recalled as a witness, testified, on Cross-Examination, as follows:

By J. Julien Southerland, Esq.:

Q. Do you own any property in the Town of North Miami west of the Bay of Biscayne?

A. No, sir, not personally. My wife has a little interest in some.

Q. Do you own any property in that area east of the Bay which the Supreme Court held was never within the Town?

A. No, sir.

Whereupon the witness was excused.

There being no further testimony, the Hearing was adjourned to a date to be agreed upon between Counsel.

All of which is respectfully submitted,

T. J. DOWDELL,
Master in Equity.

Pursuant to adjournment, there appeared at the office of the above-named Master at 10 o'clock A. M. on Wednesday, September 4th, A. D. 1935, the following named parties:

Giles J. Patterson, Esq., Attorney for Plaintiff.

T. J. Blackwell, Esq., of the firm of Patterson, Blackwell & Knight, Attorneys for Town of North Miami.

Henry K. Gibson, Esq., Attorney for Normandy Beach Development Company.

J. Julien Southerland, Esq., and N. J. Rosenstein, Esq., of the firm of Loftin, Stokes & Calkins, Attorneys for Ocean Beach Heights, Inc.

Whereupon, the following proceedings were had:

By Mr. Patterson:

I would like to offer in evidence certified copy of the bill of complaint of Tatum's Ocean Park Company against John A. Mahood, and filed in the Circuit Court of Dade County and also certified
152 copy of the bill for injunction filed by Normandy Beach Development Company against Mahood, duly certified to by the Clerk of the Circuit Court.

By Judge Southerland:

We object to both these exhibits so far as Ocean Beach Heights, Inc., is concerned on the ground we were not named as parties to these suits and that they are not binding on Ocean Beach Heights, Inc.

By Mr. Gibson:

I would like to object to these exhibits upon the ground that they are or purport to be pleadings instituted back in 1927, eight years ago and that they are immaterial. They are suits brought for the purpose of seeking an injunction against the so-called Town of Miami Shores and seeking to restrain the Town from selling the property of the plaintiffs for taxes. I don't think they have any bearing upon the question before the Court in this particular suit on which we are having a hearing.

By the Master:

Objection overruled and the documents in question will be admitted for what evidentiary effect each may

have and are marked respectively Plaintiff's Exhibits 2 and 3.

Exception noted.

By Mr. Patterson:
I would like to recall Miss Avil.

Whereupon, E. MAY AVIL resumed the stand:

Direct Examination.

By Mr. Patterson:
Q. You are the Town Clerk of the Town of North Miami?
A. Yes.
Q. Will you please examine these various documents and testify whether or not that is your signature as far as the truth and correctness of the minutes of the record of the Town are concerned?
A. Those are my signatures.
Q. Did you copy those from the Town records?
A. I did.
Q. You can vouch for their accuracy?
A. Yes.

By Mr. Patterson:
I offer as exhibit 4 the copy of the minutes of said Town of October 26th, 1931, with reference to the placing of lights on Collins Avenue and also with reference to running buses to the Surf Club.
153 As exhibit 5 certified copy of the Minutes of Town Council, dated April 22nd, 1929, voting favorably a resolution No. 391, which resolution authorized change of certain streets in Altos del Mar No. 6 and changed the resolution at the suggestion of Judge Southerland, attached to which is the copy of the resolution duly certified to as having been sug-

gested at that meeting. As exhibit No. 6 certified copy of meeting of Town Council dated March 28th, 1927, concerning a petition of Tatum's Ocean Park Company and Normandy Beach Development Company requesting that certain territory be separated from the Town. As exhibit No. 7 certified copy of resolution No. 332 passed October 8th, 1928, whereby the Town Council waived objections to the proposed construction of timber groins on property of Rankins in Altos del Mar No. 4. As No. 8 certified copy of resolution No. 331 adopted October 8th correcting assessment of property Lot A Block 1 Altos del Mar No. 4 for the year 1927. As exhibit No. 9 resolution No. 295 approving a certain amended plat of a portion of Miami Shores Island in a re-subdivision consisting of 5 plats and also amended plat of portion of Unit A amended Miami Shores; adopted April 9th, 1928. As exhibit No. 10 resolution No. 498 adopted April 28th, 1930, waiving objections to granting of a permit for the construction of a certain sea wall on Indian Creek Golf Club. As exhibit No. 11 certified copy of resolution No. 502 adopted May 12th, 1930, waiving any objection to granting permit for construction of submarine phone cable at 92nd Street and Biscayne Bay.

By Judge Southerland:

On behalf of Ocean Beach Heights, I object to the resolutions offered in evidence on the ground that they are irrelevant, incompetent and immaterial and have no bearing upon the issues before the Court as seen by the pleadings. That they are not binding on Ocean Beach Heights, Inc., and are not shown to have any connection with it.

By Mr. Gibson:

I would like to express my approval of what Judge Southerland said and in addition to further say that almost all of them are dated prior to the date the quo

warranto proceedings were filed and it seems to me to be very clear that the only real point in this
154 suit now pending before the Court is the legal effect in equity of the judgment of the quo warranto proceedings. These resolutions were adopted and are based upon alleged instances that took place prior to the filing of the quo warranto suit. There is one in 1931, the others are in 1927 and 1828. They are simply paper writings and do not seem to me to be the best evidence. I object upon the grounds as stated by Judge Southerland and upon the additional ground that almost all of the resolutions are dated prior to the institution of the quo warranto suit. Further object that the exhibits offered violate the rule in regard to the necessity of producing the best evidence as to the point upon which the testimony is desired.

By Mr. Rosenstein:

I object because these resolutions tend to show the necessity of exercise of some jurisdiction by the Municipal authorities over these lands and the Supreme Court of Florida has held that they never had any jurisdiction over these lands from the very beginning. In view of such a holding jurisdiction could not be given to the Municipalities of Florida by consent, request or otherwise.

By the Master:

I will overrule the objection and admit the certified copy of the proceedings and mark them respectively Plaintiff's' Exhibits 4 to 11 both inclusive.

Exception noted.

By Mr. Patterson:

It is hereby stipulated and agreed that the following described plats of property in the area East of the Bay which was described in Judgment of Ouster ren-

dered by the Circuit Court of Dade County, December 18th, 1931, that the original plats of such property are filed in the office of the Clerk of the Circuit Court, Dade County, Florida; that each of said plats shows that the property thereon described has been subdivided into lots of customary City size and that said plats also show the location of the streets within said property and thereby dedicated, the names of the streets and numbers of the lots and blocks respectively, the width and depth of the various lots and their location with reference to water frontage wherever the same appears and that the plats referred to are as follows: Second Amended plat of Normandy Beach, Miami Beach Development Company, Miami,
155 Florida. Recorded in Plat Book 16, page 44; Certified to March 31, 1925, filed for record May 5, 1925; Plat of Tatum's Ocean Beach Park recorded in Plat Book 5, page 35, certified January 16th, 1919, filed for record January 16th, 1919; Plat of Altos del Mar No. 6 recorded in Plat Book 8, page 106, certified by Tatum's Ocean Park Company January 30th, 1924, filed for record January 30th, 1924; Plat of Altos del Mar No. 5 certified by Tatum's Ocean Park Company November 30th, 1923, recorded in Plat Book 8, page 92, filed for record the 14th day of December, 1924. Plat of Altos del Mar No. 4 certified by Tatum's Ocean Park Company January 20th, 1925, filed Plat Book 10, page 63, January 24th, 1925; sheets 1 to 5 of the Amended Plat of a portion of Miami Shores Island recorded in Plat Book 28, page 52, certified for record by the Shoreland Company March 30th, 1928, filed for record April 13th, 1928, said plat further shows that same was approved by Town Council of Miami Shores the 9th day of April, A. D. 1928; plat of Ocean Beach Heights recorded in Plat Book 33, page 67, certified to by Tatum's Ocean Park Company the 16th day of May, 1929, filed May 9th, 1929. The certificate of the owners included the certification that Collins Ave-

nue is shown in the original plat was discontinued per resolution No. 391, passed and adopted April 22nd, 1929, by the Town Council of the Town of Miami Shores, Florida, and by resolution of the Board of County Commissioners the street was changed in accordance with the plat; amended plat of Altos del Mar No. 4 according to Plat Book 34, page 7, certified to by Tatum's Ocean Park Company on the 29th day of May, 1930, filed for record December 18th, 1930; said plat further shows that the same was approved by resolution No. 531 passed by the Town Council of Miami Shores on the 4th day of August, 1930, and that said plats need not be introduced in evidence in order to establish facts above stated in the stipulation.

Whereupon, R. L. GRIBBLE, having been called as a witness on behalf of plaintiff, and being by me first duly sworn, testified as follows:

Direct Examination.

By Mr. Patterson:

Q. What is your name?

A. R. L. Gribble.

Q. Where do you live?

A. I live in North Miami. N. E. 125th
156 Street and 8th Avenue.

Q. How long have you been living there?

A. About 26 years.

Q. Were you ever employed by the Town of North Miami or Miami Shores?

A. By Miami Shores.

Q. When were you employed?

A. The early part of 1931 until along the early part of 1932, I served about 11 months.

Q. What were your duties?

A. I had charge of the Sanitary Department.

Q. Garbage collections?
A. Yes.
Q. Did you have any equipment for making those collections?
A. Yes, the Town furnished me a truck.
Q. Did you during that period of time make any garbage collections from property east of the Bay?
A. I did.
Q. During the entire period of time?
A. I visited the Beach from two to three times a week usually on Tuesdays and Saturdays.
Q. Were there any other duties that you had with respect to the properties east of the Bay Biscayne?
A. No. I took care of the garbage of all the homes. Some were away and some took care of their own garbage. I took care of about 95% of the people that lived there.
Q. Was the Surf Club included in that?
A. Yes.

By Mr. Patterson:
Take the witness.

Cross Examination.

By Mr. Southerland:
Q. What time in 1931 did you assume office?
A. It was in February or March to the best of my recollection. I could look back over the records.
Q. Did you continue garbage collection after December 18th, 1931?
A. I did up until the time they pulled out from Miami Shores. I took care of them until they pulled out.
Q. Up to the time that the quo warranto judgment was entered December 18th, 1931?
157 A. Well, it must have been along about that time. The Mayor requested me not to go any more until or after that time I would say.

Q. Now during the summer of 1931 there were very few homes that were lived in over there, isn't that true?

A. Yes, that is true.

By Judge Southerland:

No further questions.

Re-Direct Examination.

By Mr. Patterson:

Q. Mr. Gribble, your salary was paid by the Town of Miami Shores, was it not?

A. Yes.

Witness excused.

Whereupon, J. H. GRIBBLE, having been called as a witness on behalf of plaintiff, and being by me first duly sworn, testified as follows:

Direct Examination.

By Mr. Patterson:

Q. Mr. Gribble, have you made any computation of the amount of taxes which were levied, the total amount of the assessments on property within the Town of Miami Shores for the years 1931, 1932, 1933 and 1934 and the amount of taxes collected during the calendar year?

By Judge Southerland:

We object to this question on the ground that it is all subsequent to the entering of the Judgment of Ouster and the Supreme Court of Florida says it was never within the City and it is wholly immaterial.

By Mr. Patterson:

The purpose of this testimony is to show the relative valuation of property east and west of the Bay and the amount of taxes levied against it and the amount of collections made from them during those years.

By Judge Southerland:

Here is an illegal assessment. It is not binding on these defendants. Here is a man without any authority, without any official right personally goes out and assesses property when the Supreme Court of Florida says they were not subject to taxes and not a part of that town and never were a part of that town, what bearing has it on this case if some individual goes and assesses property that the Court says it is
158 absolutely illegal and void and has no bearing before this Court. He says he is going to show what taxes were collected from this territory when the Supreme Court of Florida said they couldn't collect a cent. It is illegal.

By the Master:

Overrule the objection.

Exception noted.

A. I did.

Q. Now Mr. Gribble, how long have you been Tax Assessor?

A. Since February 5th, 1933.

Q. You are also Tax Collector, are you not?

A. Yes, since 1932.

Q. You have all the original assessments and the books showing tax collections in your possession now?

A. Yes.

Q. Can you state from the memorandum you prepared by refreshing your memory the amount of taxes that were collected by the Town of North Miami from the property East of Bay Biscayne in the calendar years of 1931, 1932, 1933 and 1934?

A. I have a copy of the statement.

Q. Refer to it and give us the actual collections?

A. This is prepared for all taxes, not separated. $10,362.64 for 1931.

Q. That was collected during the calendar year of 1931?

A. Yes. During the calendar year of 1932 collected $5,145.99 and the calendar year 1933 collected $7,889.45, in the calendar year 1934 $5,268.64.

Q. Will you give us the various amounts collected from the mainland for the same years?

A. Calendar year 1931, $9,584.07; 1932, $7,446.94; 1933, $8,272.35; 1934, $14,205.93.

Q. Can you give us the total assessed valuation of the Town of Miami Shores for 1931?

A. $4,781,300.00.

Q. What was the division of those assessments between the property east of the Bay and property West of the Bay?

A. East of the Bay $3,048,938.00, West of
159 the Bay $1,732,362.00.

Q. Will you give me the same figures with reference to 1932?

A. 1932 the property east of the Bay $1,845,140.00, west of the Bay $880,240.00. The total for that year $2,725,380.00. For the year 1933 east of the Bay $1,839,480.00, west of the Bay $882,854.00 or a total of $2,722,334.00; 1934 $1,859,130 east of the Bay and west of the Bay $874,493.00, total $2,733,623.00. Those are tax roll years and not calendar years. 1931 tax roll is due November 1st, 1931, and the others come along in the respective years.

Q. You begin the collections in November?

A. Yes.

Q. Mr. Gribble, after the judgment was obtained against the town and writ of mandamus issued against it in behalf of Brown-Crummer was there a tax levied or tax put in the Town Budget for 1932?

A. Yes.

Q. Was that levy spread on the property on both sides of the Bay?

A. Yes.

Q. How long has it been since the town made a levy on property east of the Bay for operating expenses of the town?

A. 1931 tax roll was the last tax roll that included the operating expenses east of the Bay.

Q. What was the levy in the budget of 1932 for judgment?

A. 4½ mills.

Q. In 1932 was there a debt service levy made?

A. Yes.

Q. Was there a special levy made for the judgment?

A. Yes, that was made on the 1932 roll, but it was not levied in the calendar year 1933.

Q. That was a special levy just for the judgment?

A. Yes.

Q. What was the debt service levy on the 1932 roll?

A. I couldn't give those figures.

Q. You don't remember the 1933 levy?

A. I am not familiar with the budget figures for the different years. There was only one levy made for the judgment. That was 4½ mills.

160 Q. That was for what year?

A. It was levied in the calendar year 1933, but it was on the 1932 assessment roll which was collected as current taxes.

Q. Made as a result of the mandamus?

A. Yes.

Cross Examination.

By Judge Southerland:

Q. You stated in 1931 you collected from the property east of the Bay $10,362.64?

A. Yes, that was the calendar year 1931.

Q. What was done with that money?
A. Used by the Town.
Q. How much was designated as debt service?
A. I don't have those records. I have nothing to do with the expenditure of money. I am not familiar with it.
Q. The judgment of ouster was entered the 18th of December, 1931, how much of that money was collected prior to that date and subsequent to that date?
A. I was not Tax Collector at the time, but I took office February 5th and if my memory is right I collected about half of the amount that was collected after that date. It was less than half of that amount collected up to December 18th.
Q. Approximately half of it?
A. Less than half.
Q. In 1932 you collected $5,145.00 for the property east of the Bay?
A. Yes.
Q. On the 18th day of December, 1931, the judgment of ouster was rendered and therefore all those collections should have been devoted to debt service, that is the only collection that the town could make after that, how much was devoted to debt service?
A. I don't know.
Q. How much of the $7,899.41 collected in 1933 was devoted to debt service?
A. I have no knowledge of that year.
Q. Have you any knowledge of the $5,268.64 collected in 1934 what disposition was made of it?
A. I don't have those records in my office.
161 I don't know.
Q. Do you have the budget for 1931, 1932, 1933 and 1934 in your office?
A. No, sir.
Q. Mr. Gribble, where did you get your authority to make any assessment or make any collections on the property east of the Bay subsequent to December 18th, 1931?

A. I assume that I get my authority from the Town Council.

Q. Did they authorize you to make these assessments and collections?

A. Yes, sir.

Q. By specific resolution?

A. They authorized me by resolution to make the collections.

Q. Will you produce copies of that resolution?

A. I haven't them here.

Q. Will you get them for us?

A. Yes.

Q. Do you know whether or not the town has made any payment to Brown-Crummer on account of the assessment which was directed by the United States District Court in the quo warranto proceedings?

A. No, sir, I don't know.

By Judge Southerland:

That is all.

Witness excused.

By Mr. Patterson:

We offer in evidence the resolution of the Town Council adopting the 4½ mills levy.

By the Master:

Without objection the document tendered in evidence will be admitted as Plaintiff's Exhibit No. 12.

By Mr. Patterson:

I offer a resolution No. 705 adopted October 10th, 1932, establishing a determined tax rate for the year 1932, and offer at the same time resolution No. 704 which shows the Town Budget and the adoption of same, by the Council.

By the Master:
Without objection the documents will be admitted collectively as Plaintiff's Exhibit No. 13.

By Mr. Patterson:
I offer the resolution No. 802 adopted October 23d, 1933, fixing the Town Budget for the ensuing year.

By the Master:
Without objection the document just identified will be admitted as Plaintiff's Exhibit 14.

162 By Mr. Patterson:
I offer resolution 861 adopted by the Town Council October 25th, 1934, with the budget for the ensuing year attached to it.

By the Master:
Without objection the document just identified will be admitted as Plaintiff's Exhibit No. 15.

By Mr. Patterson:
I now offer in evidence copies of the Miami Herald dated January 14th, 1929, containing an advertisement of Tatum's Bros. Corporation offering Ocean Beach Heights for sale. $20,000 for the lot, residence must not be less than $25,000 and that it will bring in the not distant future $100,000.

By Judge Southerland:
We object to that, The Tatum's Bros. are not a defendant in this cause and the location of the property is not identified. This is nothing more than a newspaper advertisement and in no way binding on any of the defendants in this cause and merely a newspaper advertisement by a third party. I further say that there is nothing in this newspaper advertisement that refers to the town or that mentions this property

as within the purported Town or has any bearing on this cause.

By the Master:

The objection is overruled and the advertisement in question is admitted for what probative effect, if any, it might have and will be numbered Plaintiff's Exhibit No. 16.

Exception noted.

Whereupon, J. B. EBERLING, having been called as a witness on behalf of plaintiff and being by me first duly sworn, testified as follows:

Direct Examination.

By Mr. Patterson:

Q. What is your name?

A. J. B. Eberling.

Q. Where do you live?

A. Biscayne Park.

Q. Miami Shores?

A. North Miami.

Q. Have you ever been employed by the Town of North Miami?

A. Yes.

Q. When were you in its employ?

A. I don't remember the year. It was during John A. Mahood's administration as Mayor. I think it was in 1931 or 1932.

Q. How long were you employed by them?

A. Well, nearly a year.

163 Q. What was your position?

A. Building Inspector.

Q. Did you ever have occasion to inspect any buildings on the property east of the Bay?

A. Yes.

Q. Did you have any applications for permits for buildings over there?
A. Yes.
Q. Can you name any of the parties that made applications?

By Judge Southerland:
We object on the ground that the applications themselves would be the best evidence.

By the Master:
Overrule the objection.

Exception noted.

A. The first permit I issued was John B. Orr Company for the Surf Club.
Q. Any others?
A. Yes, one I remember distinctly was to a man by the name of Bonsack, contractor.
Q. What was that building?
A. A residence. Two story concrete construction. Then I issued a permit to a gentleman whose name was Judge Southerland.
Q. What was that for?
A. Sheet piling and water for embankment. I have forgotten exactly what it was. I have a copy of the permit.

By Judge Southerland:
I object to this and I request that that permit be produced. I demand that that permit be produced and I deny emphatically that any permit was ever issued to me by Miami Shores.

Q. Do you know Judge Southerland?
A. I think that is the gentleman there. He called me by phone if I couldn't come to his office.
Q. You didn't have any personal contact with him?

A. At his office, yes, sir.

Q. Were there any other permits issued during your administration?

A. Yes, one or two more. I don't remember the names.

164 Q. For buildings?

A. Yes.

Q. Did you inspect any buildings after they were completed?

A. Yes, sir.

Q. Was the Indian Creek Golf Club constructed while you were building inspector?

A. Yes.

Q. Did they obtain a permit from you?

A. I think so.

By Judge Southerland:

I move that all this evidence be stricken from the record unless the permits themselves are produced, and the applications for the permits and I move that the testimony especially with reference to permit having been issued to Judge Southerland be stricken from the record unless the permit is produced.

By the Witness:

I might correct that statement, your Honor. Judge Southerland gave me a check. I don't remember whether I issued the permit in his name or the company he represented. I wouldn't say, but he wrote me out a check in his office.

By the Master:

Reserve my ruling.

By Mr. Patterson:

Q. This is the book here, what is that book?

A. This is the building permit book of blanks of the Town of North Miami.

Q. Are these the originals or carbons?

A. They are originals.
Q. Do you recognize that signature there?
A. That is my signature, yes, sir.
Q. What is the number of that permit?
A. 237.
Q. What is the next one?
A. 235.
Q. No. 236 is missing?
A. Yes.
Q. Will you glance through these, the rest of these from 237 to 246 and state whether or not any of the buildings referred to on those permits were
165 - located within the area east of the Bay?
A. 239 was issued to Normandy Beach.
Q. To whom?
A. J. P. Usher.
Q. What was that for?
A. For remodeling job, here 243 Miami Beach for W. F. Snider.
Q. For what?
A. That is for the erection of a new building.

By the Master:

Grant the motion to strike that part of the testimony which purports to describe the contents of any building permits which have been identified by the witness.

Cross Examination.

By Judge Southerland:

Q. When did you assume office as building inspector of the Town of North Miami?
A. Why, it was near Mahood's term of office, 1930 or 1931. I don't remember the date. The permits will show. April 1st, 1930.
Q. Did you exercise any jurisdiction as building inspector after December 18th, 1931, as to the property east of Biscayne Bay?
A. No, sir.
Q. Not after December 18th, 1931?
A. No.

Q. You own any property in the Town of North Miami?

A. I do.

Q. Mr. Eberling, what were your duties if any property owner put up a building without getting a building permit from you?

A. I had trouble with one and he started the building and I went over and stopped the work and his wife came out and said they were going to go on with it and I gave them 24 hours to get a permit and she came over the next morning and got the permit. That is all there was to that.

Q. He didn't get a permit and you threatened him?

A. No. I didn't threaten him. I gave them 24 hours to take out the permit and I stopped the work in the meantime.

Q. Was it your duty to cause them to be arrested?

By Mr. Patterson:

I object to that question. I think all of this is immaterial and the duties of the officer are described by the Town charter and his statement one way or the other wouldn't make any difference.

166

By the Master:

Sustain the objection.

Exception noted.

Witness excused.

Whereupon, W. L. LYNDE, having been called as a witness on behalf of plaintiff, and being by me first duly sworn, testified as follows:

Direct Examination.

By Mr. Patterson:

Q. What is your name?

A. W. L. Lynde.

Q. Where do you live?
A. North Miami.
Q. How long have you lived there?
A. 11 years.
Q. Were you ever employed by the Town of North Miami?
A. Yes.
Q. In what capacity?
A. Night policeman.
Q. When were you employed?
A. In Jeffries and Mahood's time.
Q. You remember about how many years that was?
A. About 2½ to 3 years.
Q. You remember about when you went to work?
A. Whatever year W. P. Bryan was elected.
Q. You served as special officer about 2½ years?
A. Yes, maybe more.
Q. Were you only night watchman they had?
A. Yes.
Q. As a part of your duties did you patrol the property east of the Bay?
A. Oh, yes.
Q. How often did you go over there?
A. On an average of four or five times a night.
Q. Did any of the property owners ever
167 call on you for any special protection?
A. Yes, I knew all the people over there.
Q. Did they call on you for special protection?
A. Not necessarily. They made complaints about parties on the Beach to keep people away from their houses. Nothing special.
Q. Did you have any duties in connection with the fire department?
A. Yes, I was assistant fire chief.
Q. In that connection did you render any services to the property east of the Biscayne Bay in your efforts to protect that property from fire?
A. At one time I can't say just what year, it was during Harrington's term I went over to see if we

could get the Miami Beach fire department to take care of the North part of the Beach for us and if I remember it they mentioned we should have the Mayor write a letter to him and make the proposition.

Q. Did you make any arrangements with them?

A. I mentioned at that time $25.00 a call. I guess we have records up there. He told me to have the Council and Mayor write a letter to them.

Q. Did you make any tentative agreement depending on the Council carrying it out?

A. Yes, they had been taking care of the calls and we thought it best to make arrangements on that.

Q. And you say your impression is it was $25.00 a run?

A. That is really my impression.

By Judge Southerland:

I move that this testimony be stricken. This witness is relating his impressions and his belief and if he has any knowledge of the facts he should state facts. I move that all his testimony be stricken.

By the Master:

Any part of the witness' answer or testimony which is not positive in character will be stricken from the record in accordance with the motion.

Cross Examination.

By Judge Southerland:

Q. Mr. Lynde when you were night watchman and assistant fire chief what fire apparatus did
168 the town have?

A. Had the American-La France fire engine.

Q. Only one?

A. Yes.

Q. During your incumbency in that official capacity did that fire engine ever attend any fires east of the Bay?

A. Not to my knowledge.
Q. You own any property in the Town of North Miami?
A. Yes.

By Judge Southerland:
No further question.

Witness excused.

Whereupon, D. W. ROBBINS, having been called as a witness on behalf of defendant, and being by me first duly sworn, testified as follows:

Direct Examination.

By Mr. Blackwell:
Q. You are Mr. D. W. Robbins?
A. Yes.
Q. Mr. Robbins, you are now Mayor of the Town of North Miami?
A. Yes.
Q. How long have you been Mayor?
A. Since February 5, 1933.
Q. How long have you lived in the Town of North Miami?
A. Since the winter of 1924-25.
Q. Were you present at the organization meeting of the Town held in February of 1926?
A. I was there. I didn't go inside. I stood outside and watched the proceedings.
Q. You were in the vicinity when the meeting was held?
A. Yes.
Q. Can you state approximately how many people lived in the area that was at that time incorporated as the town of Miami Shores.
A. Well, it would be hard to estimate. I would say in excess of $2,000.

Q. Can you state approximately how many people attended the organization meeting or were present at the time?

169 A. My estimate of that would be about 100 people. I know they separated them and put the registered voters over to one side and the others on the other side and the building was pretty well filled.

Q. Mr. Robbins have you read the answer that was filed in this case on behalf of the Town of North Miami?

A. Yes.

Q. Are you familiar with the affirmative averments in that answer?

A. Yes, sir, to the best of my knowledge they are true.

Q. And those averments are true?

A. Yes.

Cross Examination.

By Judge Southerland:

Q. You own property in the Town do you not?

A. I own a home.

Q. In that part west of the Bay?

A. Yes. There is one piece of land I think is still in my name that is being foreclosed by the Town. The town is foreclosing a tax lien against me.

By Judge Southerland:

No further questions.

Witness excused.

By Mr. Patterson:

It is stipulated by and between counsel for the respective parties that the original exhibits which were filed in the mandamus proceedings heretofore tried in this Court may be withdrawn in the case of

United States of America, ex rel., Brown-Crummer Investment Company, a Kansas corporation against the Town of North Miami, et al., No. 1717, Miami, be withdrawn with the permission of the District Judge and considered as exhibits in this case and attached to the summary of testimony in No. 1717 heretofore prepared by the Master in accordance with previous stipulation of parties.

By the Master:
It is so ordered.

By Mr. Patterson:
It is further stipulated that the ordinary levying tax are fixed in the budget of the Town of North Miami in the fall of 1931 and that it will be transcribed and duly certified to and may be attached by the Master as an exhibit in this cause without further proof of the same.

Admitted in evidence as Plaintiff's Exhibit No. 17. T. J. D.

It is hereby stipulated by and between the plaintiff and defendant, the Normandy Beach De-
170 velopment Company by and through their respective counsel that in regard to the testimony heretofore adduced upon behalf of the plaintiff through Mr. Collins Simmons that Mr. Walter C. Ensign referred to in said testimony as being the Manager of Normandy Beach Development Company, would testify, were he present, to the effect that his conversation with said Simmons was had without any directions from any of the officers or directors of the Normandy Beach Development Company and was had merely upon the responsibility of said Ensign and without the knowledge or acquiescence of any of the officers and directors of said corporation.

It is also stipulated that Mr. Henry Levy who is and at all times past has been, for many years, President of the Normandy Beach Development Company one of the defendants herein, would testify, were he present, that at no time did he ever authorize said Ensign or any one else to consult with any official of the Town of Miami Shores with reference to a building permit.

By Mr. Patterson:
Plaintiff rests.

By Mr. Blackwell:
Defendants rest.

Whereupon, CHARLES J. HANNOCK, having been called as a witness on behalf of Ocean Beach Heights, Inc., and being by me first duly sworn, testified as follows:

Direct Examination.

By Mr. Southerland:

Q. Will you please state your name, address and occupation?

A. Charles J. Hannock, 1410 Dade County Court House. I am a Civil Engineer and surveyor registered in the State of Florida.

Q. Mr. Hannock, I hand you the map entitled Ocean Beach Heights, Exhibit "A" attached to the answer of Ocean Beach Heights in this cause and ask you whether or not you made that map?

A. That map was made in my office and under my direction.

Q. You know it to be an accurate map of the territory shown thereon?

A. Yes, sir, it is compiled from recorded plats and recognized and accepted data among all the engineers and also in the public records.

Q. Now the distances shown between certain points on this map did you calculate those distances?

171 A. Those distances I calculated them. The distances along boundary lines and I measured with a speedometer the various distances measured along the roads.

Q. And you know of your own knowledge that the distances as shown on this map between various points as thereon stated are correct?

A. Yes, sir.

Cross Examination.

By Mr. Patterson:

Q. Mr. Hannock what is your business?

A. I am a surveyor and engineer and also County surveyor.

Q. You are the County Surveyor?

A. Yes.

Q. You say you made up your plats from the recorded plats in the Court House?

A. Yes, sir.

Q. Now on that plat I notice that you have marked Normandy Beach, Altos del Mar and Ocean Beach Heights and Tatum's Ocean Beach, are you familiar with that property personally?

A. Yes, sir.

Q. Do you know whether or not that those properties have been subdivided into lots and blocks?

A. Yes, sir.

Q. You have seen the original plats in the Court House?

A. I made them, most of them.

Q. Is there any portion of that territory there east of the Bay within those boundary lines of North Miami which have not been platted?

A. Yes.

Q. Which portion?

A. North Island of the Indian Creek Golf Club property.

Q. Is that shown on this plat?

A. Yes, this lay out shows the intended subdivision of that by the Miami Shores Corporation, but they were never fulfilled. It is nothing but a mangrove swamp now.

By Mr. Patterson:

The exhibit to which counsel refers is a plat purporting to be recorded in Plat Book 23, page 1.

172 Q. This plat is a portion of that North Island?

A. Yes.

Q. That is the only portion of that land which so far as you know has not been platted?

A. This is Ocean Beach Heights running North about 4,000 feet, a portion of that is platted. Altos del Mar, 4, 5 and 6 is platted and Normandy Beach is platted.

Q. Now there is a portion of Ocean Beach Heights that is not platted?

A. It is not subdivided into lots.

Q. The portion which is platted is the portion fronting the ocean?

A. Yes, sir.

Q. That is bounded on the rear by Collins Avenue?

A. Yes, by Collins Avenue.

By Mr. Patterson:

That is all.

Re-Direct Examination.

By Judge Southerland:

Q. What proportion of the property of Ocean Beach Heights is platted of record in Dade County and what proportion is still acreage?

A. I should say about 30% is platted of record and 70% is acreage.

Re-Cross.

By Mr. Patterson:

Q. The portion which is not platted has been filled in?

A. Yes.

Q. It is filled in so it could be used for other purposes such as building, etc.?

A. Yes, sir.

Witness excused.

By Judge Southerland:

That is all.

As there was no further testimony to be offered, the hearing adjourned sine die.

Respectfully submitted,
T. J. DOWDELL, Master.

173 PLAINTIFF'S EXHIBIT No. 1.

T. J. Dowdell, Master, July 22, 1935.

In the United States District Court in and for the Southern District of Florida.

United States of America, ex rel The Brown Crummer Investment Company, a corporation organized and existing under the laws of the State of Kansas, Relator,

vs. No. 1717-M.

Town of North Miami, formerly Town of Miami Shores, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida; Louis Nathan, Mayor, W. E. Graves, H. W. Jones, H. W. Henshaw, D. B. Avil, F. D. Snow and J. V. Shellhorse, as members of and constituting the Town Council; John A. Mahood, as City Clerk, Tax Assessor and Treasurer; and L. M. Browning, as Tax Collector, Respondents.

Peremptory Writ of Mandamus.

United States of America,

To Town of North Miami, formerly Town of Miami Shores, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida; Louis Nathan, Mayor; W. E. Graves, H. W. Jones, H. W. Henshaw, D. B. Avil, F. D. Snow and J. V. Shellhorse, as members of and constituting the Town Council; John A. Mahood, as City Clerk, Tax Assessor and Treasurer; and L. M. Browning, as Tax Collector: Greeting:

Whereas, upon the petition of the United States of America ex rel the Brown Crummer Investment Company, a corporation, organized and existing under the laws of the State of Kansas, an alternative writ of Mandamus was issued herein on the 7th day of October, A. D. 1931, commanding the above named respondents to do the acts specified and commanded in said alternative writ of mandamus or to show cause therein on or before the 20th day of October, A. D. 1931, why they refused so to do, and

Whereas, said alternative writ of mandamus was duly returned executed and served upon the Respondents thereof on to-wit October 14th, A. D. 1931, and the said Respondents, Town of North Miami, formerly Town of Miami Shores, a municipal corporation organized and existing under and by virtue of
174 the laws of the State of Florida; Louis Nathan, Mayor, W. E. Graves, H. W. Jones, H. W. Henshaw, D. B. Avil, F. D. Snow and J. V. Shellhorse, as members of and constituting the Town Council; John A. Mahood, as City Clerk, Tax Assessor and Treasurer; and L. M. Browning, as Tax Collector, did thereafter on, to-wit, the 20th day of October, A. D. 1931, file a motion to quash the alternative writ of

mandamus herein and a demurrer to said alternative writ of mandamus, and

Whereas, said cause being duly submitted upon said motion to quash a demurrer to said Alternative Writ of Mandamus, the Court having heard argument of counsel for the respective parties, did thereupon deny said Respondents' motion to quash said alternative writ and did overrule said Respondents' demurrer to said alternative writ of mandamus, and

Whereas, said Respondents did thereafter file their return or answer addressed to said alternative writ of mandamus, and

Whereas, thereafter said Relator did file a motion to strike from the joint and several answer of said Respondents certain portions of said answer, and

Whereas, thereafter on, to-wit, the 23rd day of December, A. D. 1931, this Court did make and enter its order granting and permitting Surf Hotel Corporation, a corporation, Creek Realty Company, a corporation, Ocean Beach Heights, Inc., a corporation, Home Mortgage Company, a corporation, Normandy Beach Development Company, a corporation, Lucille F. Ensign and Walter C. Ensign; Tatum's Ocean Park Company and Indian Creek Holding Company, a corporation, leave to intervene in said cause and to file therein their answer, and

Whereas, thereafter each and every of said interveners did file herein their joint and several answer on January 27th, A. D. 1932, and

Whereas, thereafter said interveners did on March 4th, A. D. 1932, file herein an amendment to said joint and several answer of said interveners, and

Whereas, thereafter Richard D. Mead was permitted to intervene in said cause as Trustee in Bankruptcy for the Intervener Indian Creek Holding Company, a corporation, and

175 Whereas, Relator did file a motion to strike certain portions of the answer of the original Respondents, to-wit, Town of North Miami, formerly Town of Miami Shores, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida; Louis Nathan, Mayor, W. E. Graves, H. W. Jones, H. W. Henshaw, D. B. Avil, F. D. Snow and J. V. Shellhorse, as members of and constituting the Town Council; John A. Mahood, as City Clerk, Tax Assessor and Treasurer; and L. M. Browning, as Tax Collector, and said Relator did further file a motion to strike certain portions of the joint and several answer of the interveners herein, and

Whereas, said cause being duly submitted upon said motion to strike said portions of the said answer of the Town of North Miami, formerly Town of Miami Shores, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida; Louis Nathan, Mayor, W. E. Graves, H. W. Jones, H. W. Henshaw D. B. Avil, F. D. Snow and J. V. Shellhorse, as members of and constituting the Town Council, John A. Mahood, as City Clerk, Tax Assessor, and Treasurer, and L. M. Browning, as Tax Collector, and further upon the motion to strike certain portions of the joint and several answer of the interveners, and the Court having heard argument of counsel for the respective parties said motions to strike and each of the same were granted, and

Whereas, thereafter said cause was, by stipulation of the various parties relator, respondent and intervener, submitted to Thos. J. Dowdell, one of the stand-

ing Masters in equity of this Court to take and report all of the testimony in this cause which might be offered by any of the parties hereto upon the alternative writ of mandamus and the answers of the parties respondent and intervener as same stood in this cause upon the granting of the aforesaid motions to strike, and

Whereas, said Thos. J. Dowdell did thereafter file in this Court his Commissioners report of the testimony taken before him by the respective parties relator, respondent and intervener, and

Whereas, leave of this Court first being had by its order dated January 7, 1933, the intervening respondents filed in this cause an amendment to their joint and several answer, and

176 Whereas, Relator herein thereafter did file in this cause its motion for peremptory writ of mandamus notwithstanding the returns or answers of the respondents and parties intervener herein, and the Court having heard argument of counsel for the respective parties and having examined the record herein and the returns and answers of the Respondents and Interveners, and the Commissioner's report of the testimony taken before him, did hold that the Relator was entitled to the issuance of said peremptory writ of mandamus, and

Whereas, it appears from the alternative writ of mandamus that on, to-wit, the 19th day of June, A. D. 1931, final judgment was entered in a suit which the Relator did institute in the above entitled Court upon certain past due obligations of the Town of Miami Shores, now Town of North Miami, said obligations being past due bonds and coupons of an Issue dated January 1st, A. D. 1927, said cause being num-

bered 1571-M on the law side of this Court; that the Town of Miami Shores, now the Town of North Miami was duly and regularly served and that final judgment was entered against said Town of Miami Shores, now North Miami, in said cause on the 19th day of June, A. D. 1931, in the sum of Eleven Thousand Seven Hundred Ninety Dollars ($11,790.00), together with cost of said suit taxed at Twelve Dollars and Fifty Cents ($12.50), said judgment being recorded in Judgment Book 1, page 496 of the Records of this Court, and that said judgment is still outstanding and unpaid, and

Whereas, said Court has ordered and directed that said alternative writ of mandamus be made peremptory and that this writ do issue,

Now, Therefore, being willing that justice be done in the premises, I do command you, Town of North Miami, formerly Town of Miami Shores, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida, Louis Nathan, Mayor, W. E. Graves, H. W. Jones, H. W. Henshaw, D. B. Avil, F. D. Snow and J. V. Shellhorse, as members of and constituting the Town Council, John A. Mahood, as City Clerk, Tax Assessor and Treasurer, and L. M. Browning as Tax Collector, and your successors in office, to forthwith fix a millage and levy a tax on all taxable, assessable property within said Town of North Miami, formerly Miami Shores, including the property described in paragraph 6 of the alternative writ of mandamus herein more
177 particularly described as follows:

"Commencing for a point of beginning at the intersection of the highwater mark of the Atlantic Ocean with the South boundary line of fractional section 35 in Township 52 South, Range 42 East, Dade County,

Florida, run West along the South boundary of Section 35 and continue along the South line of Sections 33 and 34 to the intersection of the Eastern boundary of the City of Miami; thence North northeasterly along the said Eastern limits of the City of Miami, produced a distance of 2750 feet; thence in a northeasterly direction to the northeast corner of fractional Section 27, Township 52, South, Range 42 East; thence continue in a northeasterly direction deflecting to the left from the last mentioned course to the northeast corner of the southwest one-quarter (SW¼) of the Southwest one-quarter (SW¼) of a fractional Section 23-52-42; thence North along the East line of the West one-half (W½) of the West one-half (W½) of fractional Section 23-52-42, the North boundary of said Section 23; thence East along the said North boundary line of said Section 23 to the intersection of the highwater mark of Atlantic Ocean; thence continue East along the last mentioned course produced a distance of 1500 feet; thence in a southerly direction parallel to and 1500 east of the highwater meander line of the Atlantic Ocean to the South line of fractional Section 35, Township 52 South, Range 42 East, produced Easterly; thence West along the last said South line of Section 35 to the point of beginning."

which calculated upon all the assessable, taxable property within the boundaries of the said Town of North Miami, formerly Miami Shores, including the property described in paragraph 6 of the alternative writ of mandamus and particularly described herein, will produce a sum sufficient to pay the principal of the judgment of the Relator and the costs and interest which will accrue thereon, and do further command the said John A. Mahood as City Tax Assessor and Treasurer, and his successors in office, to assess said tax so levied against each and every parcel of real and personal property located in said Town of North

Miami, formerly Miami Shores, including the property described in paragraph 6 of said alternative writ of mandamus in this cause, and particularly set
178 forth in this peremptory writ; and do further command the said John A. Mahood, as City Clerk, Tax Assessor and Treasurer, and L. M. Browning, as Tax Collector, and their successors in office, to collect said taxes so assessed against each and every parcel of real and personal property on said assessment roll so prepared and to hold all sums of money so collected to be applied by them in payment of the said judgment against the Town of Miami Shores, now the Town of North Miami, held by the Relator herein, together with interest and costs thereon.

And This You Shall Not Omit, and how you shall obey and perform the commands of this writ make known to the said Court on or before 90 days from date of the issuance of this peremptory writ.

Witness, the Honorable Halsted L. Ritter, Judge of the United States District Court in and for the Southern District of Florida, this the 24th day of January, A. D. 1933.

HALSTED L. RITTER,
United States District Judge.

Filed—Miami, Fla., Jan. 24, 1933.

Certified Copy.

United States of America,
Southern District of Florida, ss:

I, Edwin R. Williams, Clerk of the United States District Court in and for the Southern District of Flordia, do hereby certify that the annexed and foregoing is a true and full copy of the original Peremptory Writ of Mandamus filed January 24, 1933, in case

number 1717-M-Civil—United States of America ex rel The Brown Crummer Investment Company, a corporation organized and existing under the laws of the State of Kansas, Relator, vs. Town of North Miami, formerly Town of Miami Shores, et al., now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Miami, Florida, this 22nd day of July, A. D. 1935.

EDWIN R. WILLIAMS,
Clerk,
By ANNA M. FITZSIMMONS,
(District Court Seal) Deputy Clerk.

179 PLAINTIFF'S EXHIBIT No. 2.

T. J. Dowdell, Master. Sept. 4, 1935.

In the Circuit Court of the 11th Judicial Circuit of Florida, for Dade County. In Chancery.

Tatum's Ocean Park Company, a corporation under the laws of Florida, Complainant,

vs. No. ....

John A. Mahood, as Tax Collector of the Town of Miami Shores, a municipal corporation under the laws of Florida, Defendant.

To the Judges of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, in Chancery Sitting:

Tatum's Ocean Park Company, a corporation under the laws of Florida, brings this its Bill of Complaint against John A. Mahood, as Tax Collector of the Town of Miami Shores, a municipal corporation under the

laws of Florida, and thereupon your orator complains and says:

1. That the principal place of business of your orator is in Miami, Dade County, Florida, and that the defendant is over the age of twenty-one years, a resident of Dade County, Florida, and the Tax Collector of the Town of Miami Shores, a municipal corporation under the general laws of the State of Florida pertaining to cities and towns.

2. That your orator is the owner in fee simple of the land described in "Exhibit A" hereto attached and made a part of this Bill as fully as if that land were here described verbatim.

3. That said defendant has given notice by publication in the Miami Daily News and Metropolis that certain described lands situate in the Town of Miami Shores, County of Dade, State of Florida, among which is that described in "Exhibit A" of this Bill, or so much thereof as will be necessary to pay the amount due for taxes of the Town of Miami Shores for the tax year beginning April 1st, 1926, together with costs of such sale and advertising, will be sold at public auction at twelve o'clock noon on the 7th day of November, 1927, in front of the Town Hall of the Town of Miami Shores, which notice has been published in said Miami Daily News and Metropolis in its issues of October 10th and 17th, 1927, and a copy of said notice has also been posted at the door of the Town Hall of said Town of Miami Shores, and a copy of which is made a part hereof as "Exhibit B."

4. That if said defendant proceeds to sell said land as he has advertised he will do he will issue tax certificates to purchase at such sale and will record in the office of the Clerk of the Circuit Court of Dade County,

Florida, a list of such lands so sold and the numbers of said certificates which will create in the Public Records in said office of said Clerk of the Circuit Court of Dade County a record which will appear to be a lien against said land of your orator which will hinder and delay your orator in the sale, transfer, mortgaging and/or enjoying said lands.

5. That said Town of Miami Shores has attempted to assess and levy taxes upon the said described land but that said attempted levy and assessment of taxes, and the lien which appears to exist from such attempt to levy and assess, and the lien of said tax certificates or list of lands sold for taxes when sold by said defendant are each illegal, and that such attempted assessment and levy of taxes and the sale of said land for taxes by said defendant are each unlawful for the following reasons:

a. The said Town of Miami Shores was not incorporated until February 12th, 1926, and said lands of your orator were not therefore located in said Town on the 1st day of January, 1926.

b. The laws of Florida do not provide for a tax year beginning April 1st, 1926, nor has the Town Council of said Town enacted any ordinance or ordinances providing for the levy of taxes for a given year beginning April 1st or any one year, or for a levy of taxes within said Town for the year beginning April 1st, 1926, or for any year beginning on April 1st and ending March 31st of the following year.

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c. At no time did the Town Council of said Town for the purpose of taxation for the year 1926 make an estimate of the necessary and ordinary expenses and of all special and extra-ordinary expenditures contemplated, for which the revenue from the levy attempted

to be made by said Town Council would be available and did not publish such estimate one time in a newspaper published in said City, or in Dade County, or post a copy thereof within said City, and did not spread such an estimate upon the minutes of said Town Council, and have not ascertained and determined the amount of taxes necessary to be raised by said Town for the year 1926, or for a year beginning April 1st, 1926, and ending March 31st 1927, or for a year beginning April 1st, 1926.

d. That said Town Council did on January 24th, 1927, adopt its resolution No. 64 which includes Section one reading as follows:

"Section 1. That taxes for the year beginning April 1st, 1926, and ending March 31st, 1927, be and they are hereby levied for the following purposes and according to the following rates:

For general purposes	10 mills
For water works and fire protection.....	5 mills
For payment of interest upon general improvement bonds	5 mills
For payment of interest upon special assessment bonds	2 mills
	22 mills."

but that said resolution No. 64 was not copied in or spread upon the minutes of said Town Council, and that said attempted levy of said taxes is void because it is arbitrary and made without reference to the amount of money necessary to be raised for the Town's purposes and because said Town has no water works or any means for fire protection and has not provided for any water works or for any fire protection, and said attempted levy of five mills for water works and

fire protection is void because said resolution No. 64 was not adopted by a two-thirds vote of the Town Council and because thirty days notice of the intention to levy said five mills was not given by pub-
182 lication in some newspaper published in said Town once each week, nor was any other notice thereof given.

e. That the valuation of said described property by said municipality exceeds the last valuation thereof by the State of Florida for taxation, that is the valuation by the State of Florida for the year 1925, as to each piece attempted to be levied upon and as to the whole of your orator's land considered collectively, contrary to the provisions of law, and your orator avers that the Assessor of said Town in making said assessment of taxes on which said attempted levy was attempted by said Town Council set down for valuation against the several pieces of property owned by your orator, and all other real property within said Town, the exact valuation assessed against said property by Dade County for the year 1926 without viewing the same, without considering its real value and without determining its value other than to adopt verbatim the assessed value made by Dade County for the year 1926.

f. That the Town Council of said Town as to said taxes assessed for the year beginning April 1st, 1926, purported to sit as an Equalizing Board on January 24th, 1927, and at the same meeting proceeded to adopt its resolution No. 64 attempting to make a levy of taxes as hereinbefore stated.

g. That the Assessor of said Town in making assessment of real property within said Town for the year beginning April 1st, 1926, did not assess your orator's property to your orator or to unknown, nor did such

assessor assess any other property to any individual owner or to unknown.

h. That the Town Assessor did not issue a warrant in the name of the Town of Miami Shores to said defendant as Tax Collector thereof commanding him to make collection of taxes, nor was such a warrant recorded in or spread upon the minutes of said Town Council.

5. That said defendant has advertised the aforesaid land of your orator's for sale in the Miami Daily News and Metropolis, a newspaper published in Miami, Florida, without the territorial limits of Miami Shores, and that unless enjoined the said Town Council will pay and disburse to said newspaper a large sum of money for said advertising and thereby unlawfully increase the burden of taxation of your orator, there being no provision of law authorizing such publication in said Miami Daily News and Metropolis, or any other newspaper without the territorial limits of said Town of Miami Shores.

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6. That unless said defendant is enjoined from making a sale of said lands of your orator for said taxes attempted to be assessed and levied for the year beginning April 1st, 1926, and ending March 31st, 1927, an apparent lien and cloud on the title of the lands of your orator will be created and an expense incurred in the making of such sale and in the recordation in the office of the Clerk of the Circuit Court of Dade County, Florida, of a list of land so sold, which expense will greatly increase the tax burden of your orator and unlawfully increase its taxes without warrant of law, which apparent lien will not be a lawful lien but which will constitute a cloud on the title of your orator's said lands, and that said attempted but unlawful assessment and levy creates a cloud on such title though such assessment and levy is illegal.

7. That said taxes upon said lands of your orator have not been assessed and levied pursuant to law; that your orator has paid all taxes legally and regularly assessed against it and now offers to do equity; that if it is found that any taxes have been legally assessed against your orator, or its property, have not been paid to pay the same and that your orator is without a remedy at law.

In View of the Premises your orator prays that said John A. Mahood, as Tax Collector of the Town of Miami Shores, a municipal corporation under the laws of Florida, who is made a party defendant to this Bill of Complaint, be required to answer the same, but not under oath, answer under oath being waived, on a day to be fixed by the Court; that upon the presentation of this Bill a temporary injunction be granted by the aforesaid Court restraining the said defendant from selling said lands of your orator for said taxes attempted to be assessed and levied for the year beginning April 1st, 1926 and ending March 31st, 1927, until the further order of this Court; that upon a final hearing of this Bill said temporary injunction be made permanent, and that your orator may have such other and further relief in the premises as
184 equity may require and as to the Court seems proper.

May It Please the Court to grant unto your orator the State's Writ of Summons in Chancery directed as required by law to John A. Mahood, as Tax Collector of the Town of Miami Shores, a municipal corporation under the laws of Florida, commanding him to be and appear before this Honorable Court on a day and under a penalty to be therein stated to abide such orders and decrees as this Court may make herein.

TATUM'S OCEAN PARK
(Corporate Seal) COMPANY,
By FORREST SULLIVAN.
McCASKILL & McCASKILL,
Solicitors for Complainant.

State of Florida,
County of Dade.

Before me, the undersigned authority, this day personally appeared Forrest Sullivan, who being by me first duly sworn, says that he is V. Pres. of Tatum's Ocean Park Company, a corporation under the laws of Florida, the complainant named in the foregoing bill, and that the matters and things set forth in the foregoing Bill of Complaint are true.

FORREST SULLIVAN.

Subscribed and sworn to before me, this 26 day of October, A. D. 1927.

J. W. COLLINS,
(Notarial Seal) Notary Public, State of Florida.

My commission expires: Sept. 13, 1927.

State of Florida,
County of Dade.

Before me, the undersigned authority, this day personally appeared G. E. McCaskill, who being first duly sworn, says that he has examined the records of the Town of Miami Shores pertaining to tax levy by it for the year beginning April 1st, 1926, and that the matters and things set forth in the foregoing Bill of Complaint with reference to such records are true.

G. E. McCASKILL.

185 Subscribed and sworn to before me, this 26th day of October, A. D. 1927.

LORENA DRANE,
(Notarial Seal) Notary Public, State of Florida.

My commission expires Aug. 10th, 1929.

The following lots in Altos Del Mar No. 4, a subdivision of land according to a plat thereof recorded in

Plat Book 10, at page 63, of the Publc Records of Dade County, Florida:

Lots	Block
1, 2, 4, 5, 6, 8, 9 and A	1
2, 3, 5, 6, 7, 8, 9	2
1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 13, 14, 15, 16, B	3
1, 2, 4, 5, 6, 7, 8, 10, 11, 12, 14, 15, 16, U	4
3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 18, 1	5
1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, C	6
1, 8, 10, 11, 12, 13, 14, 15, 17, 18, D	7
1, 8, 10, 12, 13, 14, 15, 16, 17, 18, S	8
1, 2, 3, 4, 5, 6, 7, 8, 10, 12, 13, 14, 15, 16, 17, 18, R	9
1 5, 9, 10, 11, 16, 17, E	10
1, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, F	11
1, 2, 4, 8, 9, 10, 11, 12, 13, 14, 15, 18, Q	12
2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15, 16, 18, P	13
1, 2, 5, 6, 8, 9, 10, 11, 12, 13, 14, 17, 18, G	14
1, 4, 5, 6, 8, 10, 11, 12, 13, 14, 17, 18, H	15
1, 2, 3, 4, 5, 6, 8, 9, 11, 13, 18, O	16
2, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, N	17
1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, I	18
1, 3, J	19
1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, M	20
Triangular piece of land West of Block 20	
3, 4, 5, 6, 7, 8, 9, L	21
4, 5, 6, 7, 8, K	22

186 The following lots in Altos Del Mar No. 5, a subdivision of land according to a plat thereof recorded in Plat Book 8, at page 92, of the Public Records of Dade County, Florida:

Lots	Block
10, 11	1
9, 11	2
10, 15, 17	3
7, 18	4
1, 2, 3, 4, 23, 24	5
1, 2, 4, 6, 14, 23	6

22	7
1, 2, 14, 15	8
2, 19	9
4, 18	10
1, 5, 11, 12, 14, 15, 22	11
3, 4, 5, 7, 8, 9, 15, 16, 24	12
2, 3, 8, 13, 14	13
2, 3, 5, 6	14
3, 4	15
3, 6	16
2, 10	17

187 The following lots in Altos Del Mar No. 6, a subdivision of land according to a plat thereof recorded in Plat Book 8, page 106, of the Public Records of Dade County, Florida:

(Lots)	(Block)
10, 11	1
4, 5, 6, 10	2
12	3
2, 5, 6, 9, 15, 20, 21, 27, 28	4
2, 11, 16, 18, 19, 22, 26, 27, 28	5
1, 2, 26, 27, 28, 31	6
7, 16, 17, 18, 19, 22	7
12, 16, 24	8
11, 13, 17, 20	9
10, 15, 16, 18	10
3, 14, 15	11
5, 6, 9, 10, 11, 16, 17, 18	12
1, 7, 8, 10	13
3, 7, 8, 10, 12	14

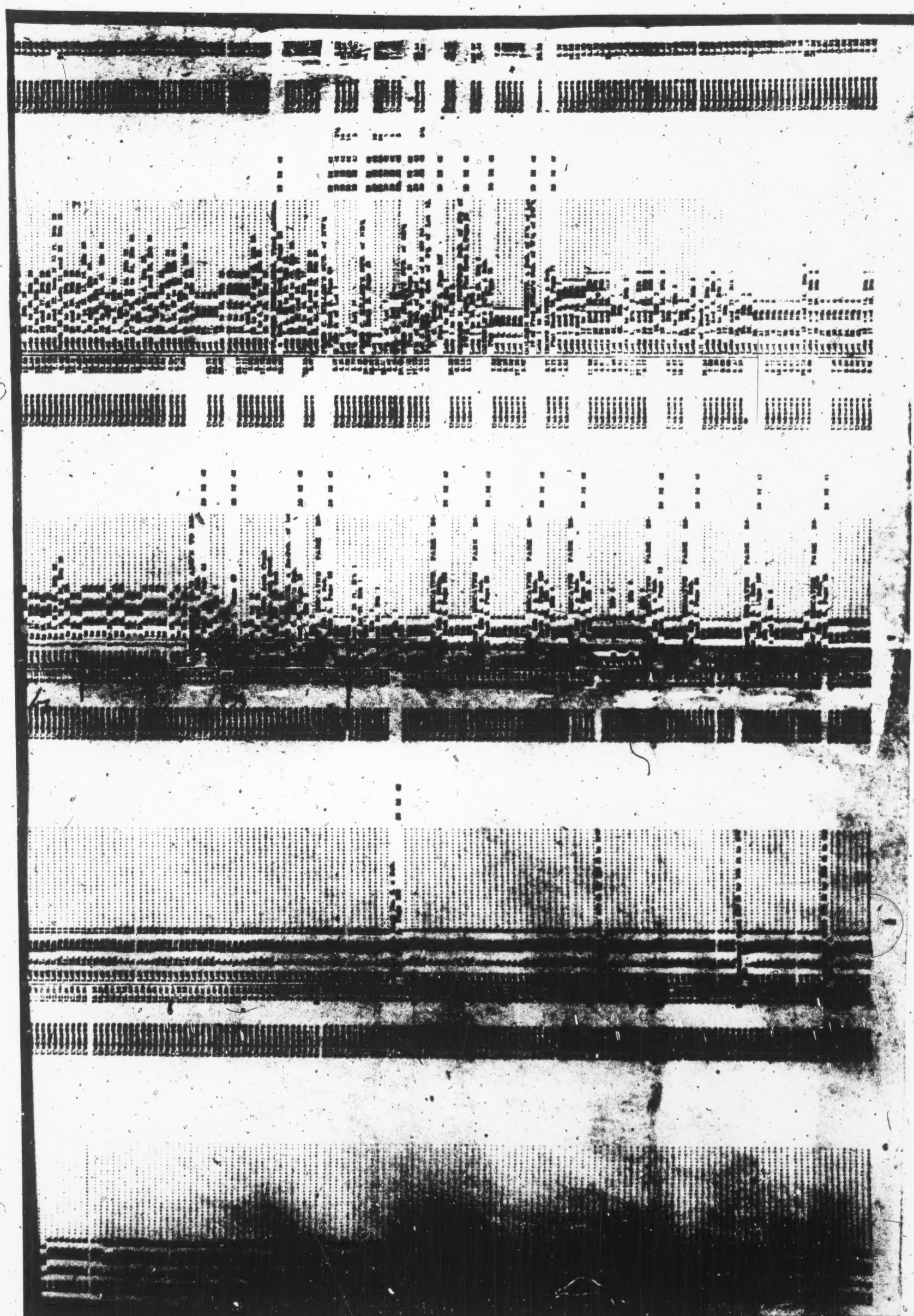
Lots 4, 18, 19, 20, 21, 22 and 26 of Tatum's Ocean Beach Park, a subdivision of land according to a plat thereof recorded in Plat Book 5, Page 35, of the Public Records of Dade County, Florida;

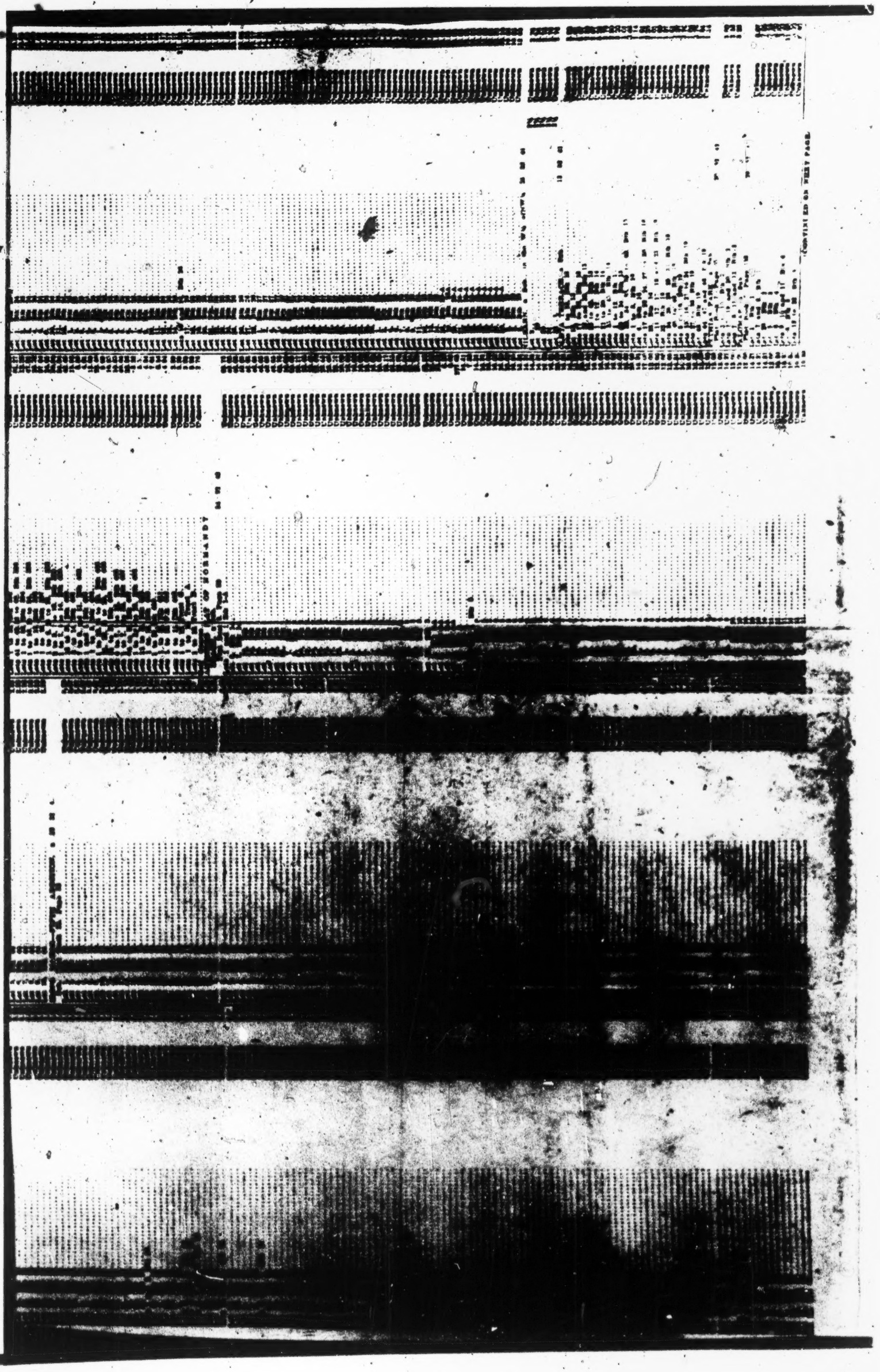
and

Government Lots 1, 2 and 3 (less Baker's Haulover) in Section 26, Township 52 South of Range 42 East in Dade County, Florida.

LEGAL NOTICE

Notice is hereby given that the following described lands situated in the Town of Miami Shores, County of Dade, State of Florida, or so much thereof as will be necessary to pay the amount due for taxes of the Town of Miami Shores for the tax year beginning April 1st, 1926, herein set opposite to the same, together with cost of such sale and advertising, will be sold at public auction at twelve o'clock noon on the seventh day of November, 1927, in front of the Town Hall of the Town of Miami Shores, Dade County, Florida:





MARKET AND FINANCIAL NEWS

...s Are Revered By Market Tr...d Right Now, Says Brown

STOCKS SLUMP AFTER OPENING RATHER STRONG

N. Y. STOCKS

GRAIN

CHICAGO, Oct. 17.—(AP)—Better weather in Canada turned wheat prices downward today after a show of firmness at the start. Initial strength resulted from unsettled fall options in quotations at Liverpool that were associated with smallness of world shipments.

Opening unchanged to ⅛c higher, wheat soon declined all around to below Saturday's finish.

Corn, oats and provisions were easier, with corn starting at ⅛c off to ⅜c advance and subsequently showing a decided general setback.

11 DRUNK DRIVERS GET JAIL TERMS

Eleven persons were fined $50 and sentenced to serve five days in the city jail in Miami police court Monday, on charges of driving automobiles under the influence of liquor. The docket of 79 cases included numerous disorderly conduct and drunk charges.

WALL STREET BRIEFS

NEW YORK, Oct. 17.—(AP)—Stockholders of International Harvester Co. will vote Oct. 30 on a proposed increase of 2,000,000 shares in the basic authorized common stock of four to one, which, if approved, would increase the outstanding common shares from 1,000,000 to 4,000,000 shares.

CUTTON

NEW ORLEANS, Oct. 17.—(AP)—The cotton market opened easier, owing to much lower Liverpool cables than due. First trades showed losses of 22.1c to 26 points and prices continued to ease off on denial from Washington of any price predictions such as caused Saturday's rally.

December traded down to 20.83, January to 20.81 and March to 21.10, or 20 to 26 points below Saturday's close.

Toward the end of the first hour, prices rallied 10 to 15 points, being supported by a storm warning off the Florida coast.

NEW YORK, Oct. 17.—(AP)—The cotton market opened easy today at a decline of 17 to 21 points under liquidation or resulting by buyers of Saturday, who appeared to be influenced by relatively easy Liverpool cables and a favorable view of over Sunday weather conditions in the south.

December contracts sold off to 20.62 and March to 20.87; or about 20 to 21 points below Saturday's closing quotations.

KNIGHT AGENCY OPENS TUESDAY

MEMORIAL HELD FOR LOST EDITOR

WEST NEW YORK, N. J., Oct. 17.—(AP)—More than 10,000 persons paid honor yesterday afternoon, at outdoor memorial services to the memory of Philip Payne, managing editor of the New York Daily Mirror, who was lost at sea with the New York-to-Rome monoplane Old Glory, Sept. 7.

The services were held under the direction of Chirk post, American Legion. The principal address was delivered by Mayor James J. Walker of New York.

The eulogy was by Haddon Irvine, editor of the Hudson Dispatch and personal friend of Payne.

FORWARD all Florida!

All over the country, the papers are foretelling a big winter season ahead

4 GIVEN FIRST SOLDIER MEDALS

2 BUSSES BRING MIAMI VISITORS

DARROW BACK FROM EUROPE

WALL STREET BRIEFS

LIVESTOCK

FLORIDA MARKETS

SHIPPING NEWS

Butter, Eggs, Cheese

all Florida!

All over the country, the papers are forecasting a big winter season ahead for Florida!

A bigger and better Miami!

A bigger and better City National!

Though frankly we're less concerned with making it bigger than we are with making it better.

Are you making full use of the friendly service we always want to give.

Always glad "to talk things over."

CITY NATIONAL BANK and TRUST COMPANY
116 East Flagler

Member Federal Reserve
Capital, $2,000,000
Surplus, $300,000

Depositary for United States Government, the State of Florida, the County of Dade, the City of Miami

BANKRUPT SALE

By order of the U. S. District Court I am ordered to sell to the highest and best bidder for cash the entire assets, consisting of $55,000 stock of Furniture including Office Equipment, Two Trucks and Book Accounts of approximately $45,000 of the

Powell Furniture Co.
163 W. Flagler St., Miami, Fla.

Sale to be held on the premises at 10 a. m. October 21, 1927. Bidding to start at $30,000. 10% cash at time of bid. Balance upon confirmation

FRANK G. HATHAWAY, RECEIVER
209 Shoreland Bldg

191 PLAINTIFF'S EXHIBIT No. 3.

T. J. Dowdell, Master, Sept. 4, 1935.

In the Circuit Court of the 11th Judicial Circuit of Florida in and for Dade County. In Chancery.

The Normandy Beach Development Company, a corporation, duly organized and existing under the laws of the State of Ohio and doing business in the State of Florida, Complainant,

vs. No. ....

John A. Mahood, as Tax Collector of the Town of Miami Shores, a municipal corporation under the laws of the State of Florida, Defendant.

Bill for Injunction and Other Relief.

To the Judges of the Circuit Court of the Eleventh Judicial Circuit of the State of Florida, in and for Dade County, in Chancery Sitting:

The Normandy Beach Development Company, a corporation duly organized and existing under the laws of the State of Ohio and doing business in the State of Florida, Complainant, brings this, its Bill of Complaint against John A. Mahood, as Tax Collector of the Town of Miami Shores, a Municipal corporation under the laws of the State of Florida, Defendant, and thereupon your orator complains and says:

1. That the principal place of business of your Orator in the State of Florida is in Miami, Dade County, Florida, and that the Defendant, John A. Mahood, Tax Collector of the Town of Miami Shores, a Municipal corporation under the laws of the State of Florida is over the age of twenty-one (21) years and a resident of Dade County, Florida, and is the Tax Collector of the Town of Miami Shores, a Muni-

cipal corporation under the laws of the State of Florida pertaining to cities and towns.

2. That your Orator is the owner in fee simple of the land particularly described in Exhibit A attached hereto and made a part of this Bill of Com-
192 plaint as fully and completely as if the said land were herein described verbatim.

3. That said Defendant has given notice by publication in the Miami Daily News & Metropolis that certain described lands situate, lying and being in the Town of Miami Shores, County of Dade, State of Florida, among which is that described in Exhibit A of this Bill of Complaint or so much thereof as will be necessary to pay the amount due for taxes to the Town of Miami Shores for the tax year beginning April 1st, 1926, together with the costs of such sale and advertising, will be sold at public auction at 12 o'clock Noon on the 7th day of November, A. D. 1927, in front of the town hall of the Town of Miami Shores, which notice has been published in said Miami Daily News & Metropolis in its issues of October 10th, 17th, 24th, and 31st, 1927, and a copy of said notice has also been posted at the door of the town hall of said Town of Miami Shores and a copy of which, as published in the said Miami Daily News & Metropolis in its issue of October 17th, 1927, is hereto attached and made a part of this Bill of Complaint marked Exhibit B.

4. That if said Defendant proceeds to sell said lands as he has advertised he will do, he will issue tax certificates to purchasers at such sale and will record in the office of the Clerk of the Circuit Court of Dade County, Florida, a list of such lands so sold and the numbers of said certificates which will create in the public records in said office of said clerk of the Circuit Court of Dade County, Florida, a record which will

appear to be a lien against the said lands of your Orator and which will hinder and delay your Orator in the sale, transfer, mortgaging and/or enjoying said lands.

5. That said Town of Miami Shores has attempted to assess and levy taxes upon said described lands but that said attempted levy or assessment of taxes and the lien which appears to exist from such attempt to levy and assess and the lien of said tax certificates, or list of lands sold for taxes when sold by said Defendant, are each illegal and that such attempted assessment and levy of taxes and the sale of said lands for taxes by said Defendant are each unlawful for the 193 following reasons:

(a) The said Town of Miami Shores was not incorporated until February 12th, 1926, and the said lands of your Orator were not therefore located in said Town of Miami Shores on the first day of January, 1926.

(b) The laws of Florida do not provide for a tax year beginning April 1st, 1926, nor has the Town Council of said Town of Miami Shores enacted any ordinance or ordinances providing for the levy of taxes for a given year beginning April 1st of any one year or for a levy of taxes within said Town of Miami Shores for the year beginning April 1st, 1926, or for any year beginning on April 1st and ending on March 31st of the following year.

(c) At no time did the Town Council of the said Town of Miami Shores, for the purpose of taxation for the year 1926 make an estimate of the necessary and ordinary expenses of all special and extraordinary expenditures contemplated from which the revenue for the levy attempted to be made by said Town Council of the Town of Miami Shores would be available and

did not publish such estimate one time in a newspaper published in said Town or in Dade County, Florida, or post a copy thereof within the limits of the said Town of Miami Shores, and did not spread such an estimate upon the minutes of the said Town Council of the Town of Miami Shores, and have not ascertained and determined the amount of taxes necessary to be raised by the said Town of Miami Shores for the year 1926 or for a year beginning April 1st, 1926, and ending March 31st, 1927, or for a year beginning April 1st, 1926.

(d) That said Town Council of the Town of Miami Shores did, on January 24th, 1927, adopt a certain resolution known as No. 64 which includes Section 1, reading as follows:

"Section 1. That taxes for the year beginning April 1st, 1926, and ending March 31st, 1927, be and they are hereby levied for the following purposes and according to the following rates:

For general purposes	10 mills
For water works and fire protection	5 mills
For payment of interest upon general improvement Bonds	5 mills
For payment of the interest upon special assessment Bonds	2 mills
	22 mills"

194 but that said resolution No. 64 was not copied in or spread upon the minutes of the said Town Council of the Town of Miami Shores and that said attempted levy of said taxes is void because it is arbitrary and made without reference to the amount of money necessary to be raised for the Town's purposes and because said Town of Miami Shores has no water works or any means of fire protection and

has not provided for any water works or for any fire protection and said attempted levy of five mills for water works and fire protection is void because said resolution No. 64 was not adopted by two-thirds vote of the Town Council of the Town of Miami Shores and because thirty days notice of the intention to levy said five mills was not given by publication in some newspaper published in said Town of Miami Shores once each week, nor was any other notice thereof given to the tax payers or to the general public.

(e) That the valuation of said described property by said Municipality exceeds the last valuation thereof by the State of Florida for the year 1925 as to each piece attempted to be levied upon, and as to the whole of your Orator's lands considered collectively, contrary to the provisions of law and your Orator avers that the tax assessor of the said Town of Miami Shores in making said assessment of taxes on which said attempted levy was attempted by said Town Council set down for valuation against the several pieces of property owned by your Orator, and all other real property within the said Town, the exact valuation assessed against said property by Dade County for the year 1926 without viewing the same and without considering its real value and without determining its value other than to adopt verbatim the assessed value made by Dade County for the year 1926.

(f) That the Town Council for the said Town of Miami Shores as to said taxes assessed for the year beginning April 1st, 1926, purported to sit as an Equalizing Board on January 24th, 1927, and at the same meeting of the said Town Council proceeded to adopt its resolution No. 64 attempting to make a levy of taxes as hereinbefore stated.

(g) That the Assessor of said Town of Miami Shores in making assessment of real property within

the said Town for the year beginning April 1st, 1926, did not assess your Orator's property to your
195 Orator or to unknown, nor did such assessor assess any other property to any individual owner or to unknown.

(h). That the Town Assessor of the said Town of Miami Shores did not issue a warrant in the name of the said Town of Miami Shores to said Defendant as Tax Collector thereof commanding him to make collection of taxes, nor was such a warrant recorded in or spread upon the minutes of the said Town Council of the said Town of Miami Shores.

5. That the said Defendant has advertised the aforesaid lands of your Orator for sale in the Miami Daily News & Metropolis, a newspaper published in Miami, Florida, and without the territorial limits of the Town of Miami Shores and that unless enjoined, the said Town Council will pay and disburse to said newspaper a large sum of money for said advertising and thereby unlawfully increase the burden of taxation upon your Orator, there being no provision of law authorizing such publication in said Miami Daily News & Metropolis or any other newspaper published without the territorial limits of the said Town of Miami Shores.

6. That unless said Defendant is enjoined from making a sale of said lands of your Orator for said taxes attempted to be assessed and levied for the year beginning April 1st, 1926, and ending March 31st, 1927, an apparent lien and cloud on the title to the lands of your Orator will be created and an expense incurred in the making of such sale and in the recordation in the office of the Clerk of the Circuit Court in Dade County, Florida, of a list of the lands so sold, which expense will greatly increase the tax burden of

your Orator and unlawfully increase its taxes without warrant of law which apparent lien will not be a lawful lien but which nevertheless, will constitute a cloud on the title of your Orator's said lands and that said attempted but unlawful assessment and levy will create a cloud on such title though such assessment and levy is illegal.

7. That said taxes upon said lands of your Orator have not been assessed and levied pursuant to law; that your Orator is willing to pay all taxes legally and regularly assessed against its property and now offers to do equity; that if it is found that any taxes have been legally assessed against your Orator by the officials of the Town of Miami Shores, or its
196 property, have not been paid to pay the same and that your Orator is without adequate remedy at law.

In view of the premises, your orator prays that said John A. Mahood, the Defendant, as Tax Collector of the Town of Miami Shores, a Municipal Corporation under the laws of the State of Florida who is made a party Defendant to this Bill of Complaint be required to answer the same, but not under oath, answer under oath being waived, on a day to be fixed by the Court; that upon the presentation of this Bill of Complaint a temporary injunction be granted by this Honorable Court restraining the said Defendant from selling the said lands of your Orator for said taxes attempted to be assessed and levied for the year beginning April 1st, 1926, and ending March 31st, 1927, until the further order of this Court; that upon a final hearing of this Bill of Complaint said temporary injunction may be made permanent and that your Orator may have such other and further relief in the premises as equity may require and as to the Court may seem proper.

May It Please the Court to grant unto your Orators the State's most gracious writ of subpoena in chancery directed as required by law to John A. Mahood as Tax Collector of the Town of Miami Shores, a Municipal Corporation under the laws of the State of Florida commanding him to be and appear before this Honorable Court on a day and under a penalty to be therein named, to abide by such orders and decrees as the Court may make herein.

THE NORMANDY BEACH DEVELOPMENT COMPANY,
By WALTER C. ENSIGN,
(Corporate Seal) Asst. Sec'y.

CLARK & CLARK,
Solicitors for Complainant.

State of Florida,
County of Dade, ss:

Before me, the undersigned authority, this day personally appeared Walter C. Ensign, who being by me first duly sworn says that he is Asst. Secretary of The Normandy Beach Development Company, a corporation organized and existing under the laws of the State of Ohio and doing business in the State of Florida, the Complainant named in the foregoing Bill and that the matters and things set forth in the foregoing Bill of Complaint are true.

197 WALTER C. ENSIGN.

Sworn to and subscribed before me this 3rd day of November, A. D. 1927.

PHYLLIS BEST,
(Notarial Seal) Notary Public, State of Florida at Large.

My commission expires: Aug. 15, 1930.

State of Florida,
County of Dade, ss:

Before me, the undersigned authority, this day personally appeared D. H. Johnson, Jr., who being first duly sworn says that he has examined the records of the Town of Miami Shores, Dade County, Florida, pertaining to tax levied by it for the year beginning April 1st, 1926, and that the matters and things set forth in the foregoing Bill of Complaint with reference to such records are true.

D. H. JOHNSON, JR.

Sworn to and subscribed before me this 3rd day of November, A. D. 1927.

PHYLLIS BEST,
(Notarial Seal) Notary Public, State of Florida at Large.

My commission expires: Aug. 15, 1930.

EXHIBIT A.

List of property owned by the Normandy Beach Development Company.

Lots 12, 13, 20 and 21 of Block 1 according to Second Amended Plat of Normandy Beach.

Lots 1, 2, 6 and 7 Block 1-A according to Second Amended Plat of Normandy Beach.

Lots 9, 12, 14, 16 and 18 Block 2 according to Second Amended Plat of Normandy Beach.

Lots 5, 7, 8, 9, 10, 14, 15, 17, and 18 Block 3 according to Second Amended Plat of Normandy Beach.

The South Half of Lot 2, lots 3, 4, 5, 6, 7 and 8 Block 5 according to Second Amended Plat of Normandy Beach.

Lots 1, 2, 8, 14 and 19 Block 6 according to Second Amended Plat of Normandy Beach.

Lots 2, 12, 13, 14, 15, 16, 17 and 18 Block 7 according to Second Amended Plat of Normandy Beach.

198 Lots 1, 2, 3, 4, 6, 7, 9 and 18 Block 8 according to Second Amended Plat of Normandy Beach.

Lot 18 Block 9 according to Second Amended Plat of Normandy Beach.

Lots 2 and 8 Block 10 according to Second Amended Plat of Normandy Beach.

Lots 6, 7, 8, 11, 12, 14, 15 and 16 Block 11 according to Second Amended Plat of Normandy Beach.

Lots 3, 4, 6, 7, Block 12 according to Second Amended Plat of Normandy Beach.

Lots 2, 3, 4, 6, 11, 12, 13, 14, and 15 Block 13 according to Second Amended Plat of Normandy Beach.

Lots 1, 2, 4, 5, 6, 8, 11, 12, 18 and 19 Block 14 according to Second Amended Plat of Normandy Beach.

Lots 2, 3, 4, 7, 8, 9, 13, 14, 16, 18 and 20 Block 15 according to Second Amended Plat of Normandy Beach.

Lots 7 and 10 Block 16 according to Second Amended Plat of Normandy Beach.

Exhibit A.

Lots 4, 5, 8, 9, 14, 15 and 16 Block 17 according to Second Amended Plat of Normandy Beach.

Lots 1, 2, 3, 5, 17, 18 and 19 Block 18 according to Second Amended Plat of Normandy Beach.

Lots 2, 3, 5 and 18 Block 19 according to Second Amended Plat of Normandy Beach.

Lots 1, 2, 4, 7, 14, 15, 17 and 18 Block 20 according to Seconded Amended Plat of Normandy Beach.

Lots 1, 9, 10, 15, 17 and 18 Block 21 according to Second Amended Plat of Normandy Beach.

Lots 1, 3, 7, 9, 10, 18, 19 and 20 Block 22 according to Second Amended Plat of Normandy Beach.

Lots 1, 2, 3 and 6 Block 23 according to Second Amended Plat of Normandy Beach.

Lots 3, 4, 6 and 7 Block 23-A according to Second Amended Plat of Normandy Beach.

Lots 1, 2, 3, 4, 6, 11 and 12 Block 24 according to Second Amended Plat of Normandy Beach.

199 Lots 1, 2, 3, 4 and 5 Block 25 according to Second Amended Plat of Normandy Beach.

Lots 1, 2, 3, 4, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 Block 26 according to Second Amended Plat of Normandy Beach.

Lots 1, 2, 4, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24 and 25 Block 27 according to Second Amended Plat of Normandy Beach.

Lots 1, 4, 6, 7, 8, 9, 11, 12, 13 and 14 Block 28 according to Second Amended Plat of Normandy Beach.

Lots 16, 19, 20, 21, 22, 23, 24, 25, 26, 29 and 30 Block 28-A according to Second Amended Plat of Normandy Beach.

Lot 3 of Block 29 according to Second Amended Plat of Normandy Beach.

EXHIBIT B.

(Exhibit B is a newspaper advertisement of certain lands for sale by the Town of Miami Shores, and is the same as the exhibit copied at page 218 of this transcript.)

PLAINTIFF'S EXHIBIT No. 4.

T. J. Dowdell, Master, Sept. 4, 1935.

Copy.

Minutes of the Regular Meeting of the Town Council of the Town of North Miami, Florida, October 26, 1931.

At eight o'clock P. M., the 26th day of October, 1931, the Council met and was called to order by President pro-tem Henshaw.

Messrs. Henshaw, Jones, Graves, Avil and Raymond were present and Messrs. Shellhorse and Snow were absent.

Minutes of an adjourned regular meeting of October 19th, was read by the Clerk and approved as read.

Resolution No. 619 * * *

* * * * *

The matter of placing a few lights on Collins Avenue between the North Line of Miami
200 Beach and Surf Club, was taken up by the Council. By motion of Mr. Jones and seconded by Mr. Graves the Council Agreed to maintain the lights on the same basis which applies to the other street lights, and the Clerk was instructed to write the Florida Power and Light Co., of the Council's action.

The Motion upon being put to a vote, passed unanimously.

Also the matter of repairing Collins Avenue and other places which were in bad shape was also discussed, and Mr. Graves agreed to take the matter up with Mr. Turner, County Commissioner.

Mr. Graves made a motion, being seconded by Mr. Avil, and passed unanimously, that the Council communicate with the Bus Company asking for their cooperation in running buses out as far as the Surf Club for the benefit of their many employees and patrons as well. The Clerk was instructed to write the Bus Company on the subject.

By motion of Mr. Avil seconded by Mr. Graves, Council adjourned.

* * * * *

The following minutes were read at a meeting of the Council on November 9th, A. D. 1931.

(Signed) H. W. HENSHAW,
President Pro-Tem.

Attest:
JOHN A. MAHOOD,
Town Clerk. (Corporate Seal)

I hereby certify that the foregoing is a true and correct Copy of the Minutes of the Town Council of the Town of North Miami, Florida, October 26, 1931.

E. MAY AVIL,
Town Clerk.

PLAINTIFF'S EXHIBIT No. 5.

T. J. Dowdell, Master, Sept. 4, 1935.

Copy.

Minutes of the Regular Meeting of the Town Council of the Town of Miami Shores, Monday, April 22, A. D. 1929.

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carried unanimously.

A letter was read from Brown Crummer Co. stating that they were preparing to proceed without further delay in the issuing of the refunding bonds.

Two letters addressed to the Council signed by T. F. Hall were read by the Clerk, whereupon the President Pro Tem turned them over to Attorney Bryant for reply.

* * * Mr. Bennett reported favorably Resolution No. 391 entitled, a Resolution Authorizing change of certain street in Altos Del Mar #6. The Resolution was read at length by the Clerk, whereupon Mr. Bennett objected to the same until some agreement was made in writing as to the kind of street to be put in. Upon agreement with Judge Sutherland, who presented the resolution for consideration, the word "Concrete"

was inserted. Whereupon Mr. Bennett moved that the resolution be Adopted, this motion was seconded by Mr. Mahood and upon being put to a vote, same was carried unanimously.

Upon motion made by Mr. Bennett and seconded by Mr. Goodrich and carried, Council adjourned.

* * * * *

The foregoing minutes were read by the Clerk at the meeting of the Council, May 13, A. D. 1929, and approved as read.

(Signed) LOUIS NATHAN,
President.

Attest:
H. H. HAWTHORNE,
Town Clerk.

I hereby certify that the above is a true and correct copy of Page 2 of the Minutes of the Regular Meeting of the Town Council of the Town of Miami Shores, Monday, April 22, A. D. 1929.

E. MAY AVIL,
(Town Seal) Town Clerk.

Resolution No. 391.

Be it Resolved by the Town Council of the Town of Miami Shores, a municipal corporation under the laws of Florida, as follows:

1. That that avenue, road or highway within the Town of Miami Shores, being Collins Avenue, as shown on a plat of Altos Del Mar No. 6, a subdivision of land according to a plat recorded in Plat Book 33, at Page 25 of the Public Records of Dade County, Florida, extended North from the South line of Government Lot 3 in Section 26, Township 53 South, of Range 42 East, in Dade Coun-

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ty, Florida, to the South line of property owned by Baker's Haulover District, a special taxing district in Dade County, Florida, through which land so owned Baker's Haulover Cut extends, be, and the same is, hereby discontinued as an avenue, road, highway or street, and is re-located and changed as hereinafter provided.

2. That this resolution shall be effective as of this date, but not until Collins Avenue, as shown on a plat of a revision of Collins Avenue, attached hereto and made a part hereof, extending from the intersection of Collins Avenue and Unaka Street, as shown on a plat of Altos Del Mar No. 6, aforesaid, in a Northwesterly direction to 1st Avenue as shown on said plat of said Altos Del Mar No. 6, if projected straight North; thence extending Northerly, according to said plat attached hereto, to a point approximately 500 feet South of the South line of said property of said Baker's Haulover District; thence in an Easterly and Northeasterly direction to the South property line of Baker's Haulover District, shall have been dedicated to a width of seventy-five feet and paved at the expense of the owners of the land through which said road runs with a good and substantial Concrete pavement to the width of thirty feet in approximately the center of said seventy-five feet so dedicated; at which time of such dedication and pavement said Collins Avenue, hereinbefore discontinued, may be closed and not further subjected to the public use.

Passed and Adopted at a regular meeting of the City Council of said City, this, the 22nd day of April, A. D. 1929.

JAMES H. BETTLES,
President Pro Tem of
Town Council.

Attest:
(Signed) H. H. HAWTHORNE,
City Clerk.

Approved by the Mayor, April 23rd, A. D. 1929.
(Signed) L. H. HARRINGTON.

Attest:
(Signed) H. H. HAWTHORNE,
Town Clerk.

203 I, E. May Avil, Clerk of the Town of North Miami, Florida, do Hereby Certify that the above and foregoing is a true and correct copy of a resolution regularly passed and adopted by the Town Council of the Town of Miami Shores, now Town of North Miami, at a meeting of the Council held on the 22nd day of April, A. D. 1929.

In Witness Whereof, I have hereunto set my hand in the aforesaid official capacity, as also the seal of the said Town, on the 28th day of June, A. D. 1935.

E. MAY AVIL,
(Town Seal) Town Clerk.

Resolution No. 393.

Whereas, it has been made known to the Town Council of the Town of Miami Shores that a contract is proposed for the purchase of a tract of land in Dade County lying immediately south of Baker's Haulover, known as Government Lots 1, 2 and 3 in Section 26, Township 53 South, Range 42 East, Dade County, Florida, which contract is contingent upon consent by the Town of Miami Shores and the County Commission of Dade County, Florida, to the removal and relocation about 250 feet west of its present location of Collins Avenue as it now extends through Government Lots 1, 2 and 3; and

Whereas, it has been made known to the Town Council of the Town of Miami Shores that when said road is relocated 250 feet west of its present site it will be made 75 feet wide instead of its present width of

60 feet, and will be paved with a good and substantial pavement at least 30 feet in width, all without expense to the County of Dade, or the Town of Miami Shores, and that the granting of permission by the Town of Miami Shores and the County of Dade to remove and relocate the said road known as Collins Avenue will result in improvements in and about the aforesaid Government Lots 1, 2 and 3, amounting in value to from $5,000,000.00 to $10,000,000.00; and

Whereas, it is manifest that the relocation of said Collins Avenue and the bringing of the improvements aforesaid into Dade County will greatly enhance the value of said lands and adjacent lands and will increase the taxable value of said lands and adjacent
204 lands greatly to the benefit of Dade County and the State of Florida; and

Whereas, the Town Council of the Town of Miami Shores has heretofore passed a resolution authorizing and permitting the removal 250 feet west from its present location of the road known as Collins Avenue as it now extends through Government Lots 1, 2 and 3, in Section 26, Township 53 South, Range 42 East, Dade County, Florida; and

Whereas, the Town Council of the Town of Miami Shores is convinced that the granting of permission by the County Commissioners of Dade County for the relocating of Collins Avenue as aforesaid will result in very great advantages to this community;

Now, Therefore,

"Be it Resolved, That the Town Council of the Town of Miami Shores in meeting assembled, does

hereby petition and request the County Commissioners of Dade County, Florida, to consent immediately to the removal and relocation of Collins Ave. extending through Government Lots 1, 2 and 3, Section 26, Township 53 South, Range 42 East, Dade County, Florida, 250 feet west of its present location."

Passed and Adopted at a meeting of the Town Council of the Town of Miami Shores this 13th day of May, A. D. 1929.

(Signed) LOUIS NATHAN,
President of Town Council.

Approved by the Mayor this 13th day of May, A. D. 1929.

(Signed) L. H. HARRINGTON,
Mayor.

Attest:
H. H. HAWTHORNE,
City Clerk.

I, E. May Avil, Clerk of the Town of North Miami, Florida, Do Hereby Certify that the above and foregoing is a true and correct copy of a resolution regularly passed and adopted by the Town Council of the Town of Miami Shores, now Town of North Miami, at a meeting of the Council held on the 13 day of May, A. D. 1929.

In Witness Whereof, I have hereunto set my hand in the aforesaid official capacity, as also the seal of the said Town, on the 28th day of June, A. D. 1935.

E. MAY AVIL,
Town Clerk.

(Town Seal)

205 PLAINTIFF'S EXHIBIT No. 6.

T. J. Dowdell, Master, Sept. 4, 1935.

Copy.

Minutes of the Regular Meeting of the Town Council of the Town of Miami Shores, March 28, 1927.

Page 2.

* * * * *

Last Paragraph:

Messrs. Sullivan and Schutenberg appeared before the Council, and presented a Petition on behalf of Tatum's Ocean Park Company and Normandy Beach Development Company, requesting that certain territory be separated from the Town of Miami Shores. It was announced that the Council would give careful consideration to the Petition.

Minutes Signed by:

EARLE MORGAN,
President.

Attest:
EDW. C. DOUGHERTY,
Clerk.

I hereby certify that the foregoing is a true and correct copy of a portion of Page 2 of the Minutes of the Regular Meeting of the Town Council of the Town of Miami Shores, March 28, 1927.

E. MAY AVIL,
Town Clerk.

(Town Seal)

PLAINTIFF'S EXHIBIT No. 7.

T. J. Dowdell, Master, Sept. 4, 1935.

Resolution No. 332.

Whereas, Mr. W. B. Rankin has applied to the War Department for permission to construct timber groins on his property in Altos Del Mar No. 4, namely lots 1, 2, and 3, of block 1 and Lot 2 of block 2.

Now Therefore, Be it Resolved that the Town Council of the Town of Miami Shores, Florida, hereby waives all objection on the part of the Town of Miami Shores to the proposed construction in accordance with the drawing prepared by the W. E. Brown Engineering Co., Inc., to accompany said permit application, said drawing being dated September 25, 1928.

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Passed and Adopted this 8th day of October, A. D. 1928.

(Signed) LOUIS NATHAN,
President of Town Council.

Attest:
(Signed) H. H. HAWTHORNE,
Town Clerk. (Seal)

The above waiver of objections and proposed construction above referred to are hereby approved by me.

(Signed) F. D. SNOW,
Acting Mayor.

State of Florida,
County of Dade,
Town of Miami Shores.

I, H. H. Hawthorne, Town Clerk in and for the Town of Miami Shores, Fla., do hereby certify that

The above and foregoing copy of resolution No. 332 is a true and correct copy of the original of said resolution as passed and adopted by the Town Council of the Town of Miami Shores at their session held October 8th, 1928.

In Witness Whereof I have hereunto set my hand and affixed the official seal of the said Town of Miami Shores this 11th day of October, A. D. 1928.

(Signed) H. H. HAWTHORNE,
Town Clerk.

I, E. May Avil, Town Clerk of the Town of North Miami, Florida, Do Hereby Certify that the above and foregoing is a true and correct copy of a resolution regularly passed and adopted by the Town Council of the Town of Miami Shores, now Town of North Miami, at a meeting of the Council held on the 8th day of October, A. D. 1928.

In Witness Whereof, I have hereunto set my hand in the aforesaid official capacity, as also the seal of the said Town, on the 28th day of June, A. D. 1935.

E. MAY AVIL,
(Town Seal) Town Clerk.

207 PLAINTIFF'S EXHIBIT No. 8.

T. J. Dowdell, Master, Sept. 4, 1935.

Resolution No. 331.

Be it Resolved by the Town Council of the Town of Miami Shores, as follows:

1. That for the year 1927, Lot "A" of Block 1 of Altos Del Mar No. 4; was erroneously assessed at the valuation of $100,000.00 on the assumption that said

Lot faced 1,000 feet on the Atlantic Ocean, whereas, in fact, it only faces 350 feet and should, in accord with the valuation assessed against adjoining property, have been assessed at $35,000.00, thereby making the total tax for that year $350.00.

2. That the Clerk or Tax Collector be and they are hereby directed and authorized upon receipt of $350.00, and a further sum of 80¢ incurred as expense in the sale of said property for taxes, issue to the applicant therefor a receipt in full for 1927 taxes on said Lot, or a receipt as redemption of said property from the sale thereof.

3. That it is hereby deemed that the said assessment at $100,000.00 is erroneous, imperfect and illegal, and that the same may be adjusted as aforesaid in accord with the provisions of Sections 781 and 782 of the Revised General Satutes of Florida of 1920.

Passed and adopted, this October 8th, A. D. 1928.
(Signed) LOUIS NATHAN,
President of Town Council.

Attest:
(Signed) H. H. HAWTHORNE,
Town Clerk.

Approved by the Mayor, October 8th, A. D. 1928.
(Signed) F. D. SNOW,
Acting Mayor.

Attest:
(Signed) H. H. HAWTHORNE,
Town Clerk.

I, E. May Avil, Town Clerk of the Town of North Miami, Florida, Do Hereby Certify that the above and foregoing is a true and correct copy of a resolution regularly passed and adopted by the Town Coun-

cil of the Town of Miami Shores, now Town of North Miami, at a meeting of the Council held on the 8th day of October, A. D. 1928.

In Witness Whereof, I have hereunto set my hand in the aforesaid official capacity, as also the seal of the said Town, on the 28th day of June, A. D. 1935.

E. MAY AVIL,
Town Clerk.

(Town Seal)

PLAINTIFF'S EXHIBIT No. 9.

T. J. Dowdell, Master, Sep. 4, 1935.

Resolution No. 295.

A Resolution, Approving for Record Certain Amended Plats.

Be It Resolved By The Town Council of the Town of Miami Shores, That the amended plat of a portion of Miami Shoes Island, same being a re-subdivision of a portion of plat of Miami Shores Island consisting of five sheets according to Plats of Record, recorded in Plat Book 23, Page 1, of the Public Records of Dade County, Florida, and also the amended Plat of a portion of Unit "A" Amended Miami Shores" same being a resubdivision of a portion of the plat of Unit "A" Miami Shores, consisting of five sheets, according to plats of record, recorded in Plat Book 17, pages 44 to 48 inclusive of the Public Records of Dade County, Florida, and also the plat consisting of four sheets of "Portion of Unit B Amended" Miami Shores, same being a re-subdivision of a portion of the plat of Unit B Miami Shores consisting of four sheets according to the plats of recard recorded in Plat Book 20, Page 5 of the Public Records of Dade County, Florida, said

amended Plats above referred to being the Plats of said re-subdivisions as made and proposed by C. D. Leffler, Receiver of the Shoreland Company, a Florida Corporation, and all portions of said property lying within the Corporate limits of the Town of Miami Shores, be and the same are hereby approved for record.

Passed and Adopted by the Council, April 9, A. D. 1928.

(Signed) F. D. SNOW,
President.

Attest:
(Signed) H. H. HAWTHORNE,
Town Clerk.

Approved by the Mayor, April 9, A. D. 1928.
(Signed) J. B. JEFFRIES,
Mayor.

Attest:
(Signed) H. H. HAWTHORNE,
Town Clerk.

209 I, E. May Avil, Town Clerk of the Town of North Miami, Florida, do Hereby Certify that the above and foregoing is a true and correct copy of an Resolution regularly passed and adopted by the Town Council of the Town of Miami Shores, now Town of North Miami, at a meeting of the Council held on the 9th day of April, A. D. 1928.

In Witness Whereof, I have hereunto set my hand in the aforesaid official capacity, as also the seal of the said Town, on the 22nd day of July, A. D. 1935.

E. MAY AVIL,
(Town Seal) Town Clerk.

PLAINTIFF'S EXHIBIT No. 10.

T. J. Dowdell, Master, Sep. 4, 1935.

Resolution No. 498.

A Resolution Waiving any objection to granting permit for construction of certain seawall.

Whereas, the Indian Creek Golf Club has applied to the U. S. Engineering Department for permission to replace a wooden bulkhead with a concrete seawall, located at 92nd St. and Indian Creek, and

Whereas, the construction of said seawall does not conflict with any plans of the Town of Miami Shores;

Now, Therefore, Be It Resolved by the Town Council of the Town of Miami Shores:

That the Town of Miami Shores hereby waives any objection to the granting of this permit to the Indian Creek Golf Club.

Passed and Adopted by the Council, April 28th, A. D. 1930.

(Signed) LOUIS NATHAN,
President.

Attest:
H. H. HAWTHORNE,
Town Clerk.

Approved by the Mayor, April 28, A. D. 1930.
(Signed) JOHN A. MAHOOD,
Mayor.

Attest:
H. H. HAWTHORNE,
Town Clerk.

I, E. May Avil, Clerk of the Town of North Miami, Florida, do Hereby Certify that the above and foregoing is a true and correct copy of a resolution regularly passed and adopted by the Town Council of the Town of Miami Shores, now Town of North
210 Miami, at a meeting of the Council held on the 28th day of April, A. D. 1930.

In Witness Whereof, I have hereunto set my hand in the aforesaid official capacity, as also the seal of the said Town, on the 28th day of June, A. D. 1935.

E. MAY AVIL,
(Town Seal) Town Clerk.

PLAINTIFF'S EXHIBIT No. 11.

T. J. Dowdell, Master, Sep. 4, 1935.

Resolution No. 502.

A Resolution, Waiving any objection to granting permit for construction of submarine phone cable.

Whereas, Application has been made to the U. S. Engineering Department for permission to install a submarine cable located at 92nd St. and Biscayne Bay, Town of Miami Shores, and

Whereas, the construction of said cable does not conflict with any plans of the Town of Miami Shores:

Now, Therefore, Be It Resolved by the Town Council of the Town of Miami Shores:

That the Town of Miami Shores hereby waives any objection to the granting of said permit.

Passed and Adopted by the Council, May 12th, A. D. 1930.

(Signed) LOUIS NATHAN,
President.

Attest:

(Signed) H. H. HAWTHORNE,
Town Clerk.

Approved by the Mayor, May 12, A. D. 1930.

(Signed) JOHN A. MAHOOD.

Attest:

(Signed) H. H. HAWTHORNE,
Town Clerk.

I, E. May Avil, Clerk of the Town of North Miami, Florida, do Hereby Certify that the above and foregoing is a true and correct copy of a resolution regularly passed and adopted by the Town Council of the Town of Miami Shores, now Town of North
211 Miami, at a meeting of the Council held on the 12th day of May, A. D. 1930.

In Witness Whereof, I have hereunto set my hand in the aforesaid official capacity, as also the seal of the said Town, on the 28th day of June, A. D. 1935.

E. MAY AVIL,
Town Clerk.

(Town Seal)

PLAINTIFF'S EXHIBIT No. 12.

T. J. Dowdell, Master, Sep. 4, 1935.

Ordinance 143.

AN Ordinance Levying a Tax of Four and One-Half (4½) Mills Upon All Taxable Real Estate Within the Corporate Area of the Town of North Miami, Florida, in Compliance with the Writ of Mandamus Issued by the United States District Court for the Southern District of Florida, on January 24, A. D. 1933.

Whereas, the Honorable United States District Court for the Southern District of Florida, on January 24, A. D. 1933, directed this body to levy, assess and collect upon the taxable property within the original corporate area of the Town of North Miami, Florida, a tax sufficient to satisfy and provide for payment of the judgment heretofore recovered by Brown-Crummer Investment Company, a Kansas corporation, in the sum of $11,033.20, and

Whereas, said tax must be levied and returned to said Writ of Mandamus evidencing compliance therewith must be filed in the aforesaid Court prior to April 24, A. D. 1933, in accordance with the mandate and directions of said writ:

Now, Therefore, Be It Ordained by the Town Council of the Town of North Miami, Florida, in Lawful Meeting Assembled, as follows:

1. A tax of four and one-half (4½) mills be and the same is hereby levied, assessed and imposed upon all taxable real property within the original and present corporate area of said Town upon valuations previously assessed and now appearing upon the fiscal books

of the Town Assessor and Collector, same being the same valuation upon which was predicated and based the original current levy for the fiscal year
212 for general governmental purposes as heretofore adopted and fixed.

2. That the Town Assessor and Collector forthwith execute the provisions hereof by adding the millage hereby levied to current tax records, statements and accounts in his charge and appearing upon books in his keeping, and that payment of said additional tax be by him enforced and collected to like and similar assessed and levied at the time of and currently with the present and/or current levy upon which said Town is now proceeding and operating.

3. That said Assessor and Collector take appropriate steps to advise all taxpayers of the imposition and levy of the additional tax for which provision is herein made and this regardless of whether or not the taxes upon any particular property for the current year have already been paid, it being the intent and purpose of this ordinance to enforce collection of the additional tax hereby imposed and levied to like extent as if same had been originally included in the levy for the current year, as aforesaid.

4. That true copies of this ordinance, duly attested by the Town Clerk, be posted at or within not less than three public places within the corporate limits of said for the general information, guidance and government of the taxpayers and citizens of said Town.

(Signed) FRANKLIN E. ALBERT,
President of Council.

Approved:

(Signed) DANA W. ROBBINS,
Mayor.

I, E. May Avil, Clerk of the Town of North Miami, Florida, Hereby Certify that the foregoing ordinance was regularly passed and adopted by the Town Council of the Town of North Miami, Florida, in session assembled on the 18th day of April, 1933, A. D.

In Witness Whereof I hereunto set my hand and the official seal of the Town of North Miami, Florida, this 19th day of April, A. D. 1933.

(Signed) E. MAY AVIL,
(Seal) Town Clerk.

213 I, E. May Avil, Town Clerk of the Town of North Miami, Florida, do Hereby Certify that the above and foregoing is a true and correct copy of an ordinance regularly passed and adopted by the Town Council of the Town of North Miami, at a meeting of the Council held on the 18th day of April, A. D. 1933.

In Witness Whereof, I have hereunto set my hand in the aforesaid official capacity, as also the seal of the said Town, on the 22nd day of July, A. D. 1935.

E. MAY AVIL,
(Town Seal) Town Clerk.

PLAINTIFF'S EXHIBIT No. 13.

T. J. Dowdell, Master, Sep. 4, 1935.

Resolution No. 705.

A Resolution Establishing and Determining the Tax Rate for the Year 1932.

Whereas, the Town Council, sitting as an equalizing board, has equalized, confirmed and approved a Tax Assessment Roll for the year 1932, and

Whereas, the Council has considered an estimate of the necessary and ordinary expenses, and of all special and extraordinary expenditures contemplated for the fiscal year ensuing, and for which the revenue for the levy shortly to be made will be available:

Now, Therefore, Be It Resolved by the Town Council of the Town of North Miami, Florida:

Section 1. That there be, and there is hereby levied and assessed upon all the taxable property within the Town of North Miami, lying east of Biscayne Bay, a tax of 19 mills on each dollar of assessed valuation, as shown by the Town Assessment Roll, equalized, confirmed and approved by the Council.

Section 2. That there be, and there is hereby levied, and assessed upon all the taxable property within the Town of North Miami, lying west of Biscayne Bay, a tax of 24 mills on each dollar of assessed valuation, as shown by the Town Assessment Roll, equalized, confirmed and approved by the Council.

214

Section 3. That the Town Tax Assessor be, and he is hereby directed to issue and annex to said Assessment Roll, his Warrant, in form substantially as follows, to-wit:

"State of Florida,
Town of North Miami.

To: J. H. Gribble,
Tax Collector of the Town of North Miami:

You are hereby commanded to collect out of the real estate and personal property, and from each of the persons and corporations named in the annexed Roll,

the taxes set down in each Roll opposite each name, corporation or parcel of land therein described by law, you are to collect the same by levy and sale of the goods and chattels, lands and tenements so assessed, or of the person or corporation so taxed; and all sums collected you are to pay to the Town Treasurer; and you are further required to make all collections on or before the first Monday in April and on or before the first Monday in July you will make a final report to and settlement with the Town Treasurer and the Town Council.

Given under my hand and seal this the 10th day of October, A. D. 1932.

J. E. MARCOUX,
Tax Assessor—Town of
North Miami."

Such warrant shall remain in full force until all taxes as assessed in said roll shall be collected.

Passed and adopted by the Council October 10th, A. D. 1932.

(Signed) W. E. GRAVES,
President.

Attest:
(Signed) J. E. MARCOUX,
Town Clerk.

Approved by the Mayor October 10th, A. D. 1932.
(Signed) L. H. HARRINGTON,
Mayor.

(Signed) J. E. MARCOUX.

215 I, E. May Avil, Clerk of the Town of North Miami, Florida, do Hereby Certify that the above and foregoing is a true and correct copy of a resolution regularly passed and adopted by the

Town Council of the Town of North Miami, at a meeting of the Council held on the 10th day of October, A. D. 1932.

In Witness Whereof, I have hereunto set my hand in the aforesaid official capacity, as also the seal of the said Town, on the 22nd day of July, A. D. 1935.

E. MAY AVIL,
Town Clerk.

(Town Seal).

PLAINTIFF'S EXHIBIT No. 13.

T. J. Dowdell, Master, Sep. 4, 1935.

Resolution No. 704.

A Resolution, Determining the Amount to Be Raised by Taxation.

Whereas, The Town Council has considered estimates of the necessary and ordinary expenses and of all special and extraordinary expenditures contemplated by the Town of North Miami, for which the revenue from the tax levy about to be made will be available, and

Whereas, the Council has found that the total amount of such expenses and expenditures will be $55,826.25 over and above the amounts which will be raised from fines, forfeitures, occupational licenses, permit fees and other miscellaneous sources;

Now, Therefore, Be It Resolved by the Town Council of the Town of North Miami:

That $55,826.25 is hereby determined to be the amount of taxes necessary to be raised by the tax levy about to be made.

Passed and Adopted by the Town Council of the Town of North Miami, this 10th day of October, A. D. 1932.

(Signed) W. E. GRAVES,
President of Council.

Attest:
(Signed) J. E. MARCOUX,
Town Clerk.

Approved by the Mayor this 10th day of October, A. D. 1932.

(Signed) L. H. HARRINGTON,
Mayor.

Attest:
(Signed) J. E. MARCOUX,
Town Clerk.

216 I, E. May Avil, Town Clerk of the Town of North Miami, Florida, do Hereby Certify that the above and foregoing is a true and correct copy of a resolution regularly passed and adopted by the Town Council of the Town of North Miami, at a meeting of the Council held on the 10th day of October, A. D. 1932.

In Witness Whereof, I have hereunto set my hand in the aforesaid official capacity, as also the seal of the said Town, on the 22nd day of July, A. D. 1935.

E. MAY AVIL,
Town Clerk.

(Town Seal)

Budget for Year 1933.

Clerk's Office:		
Salary of Clerk	$1,500.00	
Stenographic Help	525.00	
Printing & Stationery	150.00	
Stamps	50.00	
Office Supplies	50.00	
Telephone & Telegraph	150.00	
Heat & Light	50.00	
Fidelity Bond	50.00	
Legal Notices	150.00	$2,675.00
Assessor's Office:		
Clerical Hire	500.00	
Printing & Stationery	250.00	
Transportation	200.00	
Office Supplies	50.00	1,000.00
Tax Collector's Office:		
Salary of Collector	1,500.00	
Stenographic Help	525.00	
Printing & Stationery	200.00	

Stamps	150.00		
Office Supplies	50.00		
Telephone & Telegraph	100.00		
Heat & Light	50.00		
Fidelity Bond	50.00		
Legal Notice & Advertising	1,000.00	3,625.00	
Mayor's Administration:			
Janitor Salary	1,000.00		
Legal & Auditing	4,000.00		
Heat & Light	150.00		
Printing & Stationery	100.00		
Insurance	700.00		
Repairs & Upkeep (Bldg.)	1,280.00	7,330.00	
Bonds due in year 1933	21,000.00		
Notes due in 1933	7,200.00		
Interest due in 1933	12,920.00	41,120.00	
		55,750.00	
Deduct bonds & interest paid in advance		5,350.00	
Amount to be raised on total roll			$50,400.00

Police Department:			
Marshal Salary	1,300.00		

Gas, Oil & Car expense	520.00	1,820.00	
Sanitary Department:			
Truck driver salary	800.00		
Gas, Oil and Truck Upkeep	500.00	1,300.00	
Fire Department:			
Fireman Salary	1,000.00		
Gas, Oil and Truck Upkeep	500.00	1,500.00	
Street Department:			
Street Lights & Repair	2,250.00	2,250.00	
		6,870.00	
Deduct license, fines & permits		2,870.00	
Special Tax on Mainland only			4,000.00
Total Budget			54,400.00
Added for contingencies that may arise			1,426.25
			55,826.25

1932 Assessment Roll (Assessed at 50% value):		
Beach Assessment	$1,845,360.00 @ 19 mills	$35,061.84
Mainland "	902,801.00 @ 24 mills	20,164.41
Total to be collected		55,826.25

218 PLAINTIFF'S EXHIBIT No. 14.

T. J. Dowdell, Master, Sep. 4, 1935.

Resolution No. 802.

A Resolution, Determining the Amount to Be Raised by Taxation.

Whereas, The Town Council has considered estimates of the necessary and ordinary expenses and of all special and extraordinary expenditures contemplated by the Town of North Miami, for which the revenue from the tax levy about to be made will be available, and

Whereas, the Council has found that the total amount of such expenses and expenditures will be $48,970.00 over and above the amounts which will be raised from fines, forfeitures, occupational licenses, permit fees and other miscellaneous sources;

Now, Therefore, Be It Resolved by the Town Council of the Town of North Miami:

That $48,970.00 is hereby determined to be the amount of taxes necessary to be raised by the tax levy about to be made.

Passed and Adopted by the Town Council of the Town of North Miami, Florida, this 23rd day of October, A. D. 1933.

(Signed) FRANKLIN E. ALBERT,
President of Council.

Attest:
(Signed) E. MAY AVIL,
Town Clerk.

Approved by the Mayor this 24th day of October A. D. 1933.

(Signed) DANA W. ROBBINS,
Mayor.

Attest:
(Signed) E. MAY AVIL,
Town Clerk.

I, E. May Avil, Town Clerk of the Town of North Miami, Florida, do Hereby Certify that the above and foregoing is a true and correct copy of a resolution regularly passed and adopted by the Town Council of the Town of North Miami, at a meeting of the Council held on the 23rd day of October, A. D. 1933.

In Witness Whereof, I have hereunto set my hand in the aforesaid official capacity, as also the seal of the said Town, on the 22nd day of July, A. D. 1935.

E. MAY AVIL,
(Town Seal) Town Clerk.

Budget for Fiscal Year—1934.

General Administration:		
Legal Services	$1,000.00	
Telephone & Telegraph	250.00	
Insurance & Bonds	200.00	
Heat & Light	300.00	
Printing & Stationery	200.00	
Postage	200.00	
Auditing	300.00	
Legal Notices & Advertising	500.00	
Repair & Upkeep—Town Hall	500.00	
Salaries:		
Clerk & Treasurer	750.00	
Assessor & Collector	1,300.00	
Janitor	950.00	
Extra Clerical Help	300.00	
Mayor	600.00	
Contingencies	1,000.00	$8,350.00
Debt Service:		
Bonds due 1934	[illegible]	
Interest due in 1934	[illegible]70.00	28,570.00

Delinquency item to be applied to Gen. Adm. & Debt Service, only, when collected		6,500.00	
Total: to be assed. on Entire Bond Area			$43,420.00
Police Department:			
Salary of Marshal	1,300.00		
Gasoline, Oil, Repairs, Sundries	500.00	1,800.00	
Fire Department:			
Salaries	400.00		
Gas, Repairs, Sundries	200.00	600.00	
Sanitary Department:			
Salary of Truck Driver	1,000.00		
Gas, Repairs, Sundries	400.00	1,400.00	
Streets & Park Department:			
Street Lighting	500.00		
Salaries & Wages	1,250.00		
Gas, Tools, Sundries	500.00	2,250.00	
Contingencies		500.00	

Total	$6,550.00	
Deduct Miscellaneous Revenue	1,000.00	
Additional Assessment: West Side		5,550.00
Total to be Collected		$48,970.00

Resolution No. 803.

A Resolution Establishing and Determining the Tax Rate for the Year 1933.

Whereas, the Town Council, sitting as an equalizing board, has equalized, confirmed and approved a Tax Assessment Roll for the year 1933, and

Whereas, the Council has considered an estimate of the necessary and ordinary expenses, and of all special and extraordinary expenditures contemplated for the fiscal year ensuing, and for which the revenue for the levy shortly to be made will be available:

Now, Therefore, Be It Resolved by the Town Council of the Town of North Miami:

Section 1. That there be, and there is hereby levied and assessed upon all the taxable property within the Town of North Miami, lying east of Biscayne Bay, a tax of 16 mills on each dollar of assessed valuation, as shown by the Town Assessment Roll, equalized, confirmed and approved by the Council.

Section 2. That there be, and there is hereby levied, and assessed upon all the taxable property within the Town of North Miami, lying west of Biscayne Bay, a tax of 22½ mills on each dollar of assessed valuation, as shown by the Town Assessment Roll, equalized, confirmed and approved by the Council.

Section 3. That the Town Tax Assessor be, and he is hereby directed to issue and annex to said Assessment Roll, his Warrant, in form substantially as follows, to-wit:

"State of Florida,
County of Dade,
Town of North Miami.

To: J. H. Gribble,
Tax Collector of the Town of North Miami:

You are hereby commanded to collect out of the real estate and personal property, and from each of the persons and corporations named in the annexed Roll, the taxes set down in each Roll opposite each name, corporation or parcel of land therein described by law, you are to collect the same by levy and sale of the goods and chattels, lands and tenements so assessed, or of the person or corporation so taxed; and all sums collected you are to pay to the Town Treasurer; and you are further required to make all collections on or before the first Monday in April and on or before the first Monday in July you will make a final report to and settlement with the Town Treasurer and the Town Council.

Given under my hand and seal this the 23rd day of October, A. D. 1933.

J. H. GRIBBLE,
Tax Assessor—Town of
North Miami."

Such warrant shall remain in full force until all the taxes as assessed in said roll shall be collected.

(Signed) FRANKLIN E. ALBERT,
President of Council.

Approved:
(Signed) DANA W. ROBBINS,
Mayor.

I, E. May Avil, Clerk of the Town of North Miami, Florida, do Hereby Certify that the above and foregoing is a Resolution regularly passed and adopted by the Town Council of the Town of North Miami, Florida, in regular session assembled this 23rd day of October, A. D. 1933.

In Witness Whereof I hereunto set my hand and the official seal of the Town of North Miami, Florida, this 24th day of October, A. D. 1933.

(Signed) E. MAY AVIL,
Town Clerk.

222 I, E. May Avil, Town Clerk of the Town of North Miami, Florida, do Hereby Certify that the above and foregoing is a true and correct copy of a resolution regularly passed and adopted by the Town Council held on the 23rd day of October, A. D. 1933.

In Witness Whereof, I have hereunto set my hand in the aforesaid official capacity, as also the seal of the said Town, on the 22nd day of July, A. D. 1935.

E. MAY AVIL,
(Town Seal) Town Clerk.

PLAINTIFF'S EXHIBIT No. 15.

T. J. Dowdell, Master, Sep. 4, 1935.

Resolution No. 861.

A Resolution, Determining the Amount to Be Raised by Taxation.

Whereas, The Town Council has considered estimates of the necessary and ordinary expenses and of all special and extraordinary expenditures contemplated by the Town of North Miami, for which the revenue from the tax levy about to be made will be available, and

Whereas, the Council has found that the total amount of such expenses and expenditures will be

$48,080.00 over and above the amounts which will be raised from fines, forfeitures, occupational licenses, permit fees and other miscellaneous sources;

Now, Therefore, Be It Resolved by the Town Council of the Town of North Miami:

That $48,080.00 is hereby determined to be the amount of taxes necessary to be raised by the tax levy about to be made.

Passed and Adopted by the Town Council of the Town of North Miami, Florida, this 25th day of October, A. D. 1934.

(Signed) E. C. HARNER,
President of Council.

Attest:
(Signed) E. MAY AVIL,
Town Clerk.

Approved by the Mayor this 26th day of October, A. D. 1934.

(Signed) DANA W. ROBBINS,
Mayor.

Attest:
(Signed) E. MAY AVIL,
Town Clerk.

223 I, E. May Avil, Town Clerk of the Town of North Miami, Florida, do Hereby Certify that the above and foregoing is a true and correct copy of a resolution regularly passed and adopted by the Town Council of the Town of North Miami, at a meeting of the Council held on the 25th day of October, A. D. 1934.

In Witness Whereof, I have hereunto set my hand in the aforesaid official capacity, as also the seal of the said Town, on the 22nd day of July, A. D. 1935.

E. MAY AVIL,
(Town Seal) Town Clerk.

Estimates of Necessary and Ordinary Expenses and All Special and Extraordinary Expenses for the Ensuing Year—1935.

General Administration:		
Legal Services	$1,500.00	
Telephone & Telegraph	250.00	
Insurance & Bonds	150.00	
Heat & Light	300.00	
Printing & Stationery	300.00	
Postage	500.00	
Auditing	300.00	
Legal Notices & Advertising	1,000.00	
Town Hall—Repairs & Upkeep	1,000.00	
Salaries:		
Mayor	600.00	
Clerk & Treasurer	1,300.00	
Assessor & Collector	1,300.00	
Janitor Service	1,400.00	
Extra Clerical Help	500.00	
Contingencies	2,000.00	$12,400.00
Debt Service:		
Bonds due during Calendar year 1935	19,000.00	
Interest due, same period—Bonds	8,430.00	

Judgment & Notes	1,200.00		
Contingencies	1,500.00	30,130.00	
Total: To be assessed over Entire Bond Area			$42,530.00
Departmental Operations (To be levied on Mainland only):			
Police Department:			
Salary of Marshal	1,300.00		
Salary of Deputies	100.00		
Other Expense	500.00	1,900.00	
Fire Department:			
Salaries	250.00		
Other Expense	250.00	500.00	
Sanitary Department:			
Salaries & Wages	1,200.00		
Other Expense	400.00	1,600.00	
Park Department:			
Salaries—Wages	1,000.00		
Other Expense	500.00	1,500.00	

Street Department:			
Street Lighting	500.00		
Salaries—Wages	1,200.00		
Other Expense	600.00	2,300.00	
Contingencies	500.00	500.00	
Total		8,300.00	
Deduct Miscellaneous Revenue	1,000.00		
Est. County Road & Bridge Fund	1,750.00	2,750.00	
Additional Assessment—West Side			5,550.00
Total to be Collected			$48,080.00

Resolution No. 862.

A Resolution Establishing and Determining the Tax Rate for the Year 1934.

Whereas, the Town Council, sitting as an equalizing board, has equalized, confirmed and approved a Tax Assessment Roll for the year 1934, and

Whereas, the Council has considered an estimate of the necessary and ordinary expenses, and of all special and extraordinary expenditures contemplated for the fiscal year ensuing, and for which the revenue
225 for the levy shortly to be made will be available:

Now, Therefore, Be It Resolved by the Town Council of the Town of North Miami:

Section 1. That there be, and there is hereby levied and assessed upon all the taxable property within the Town of North Miami, lying east of Biscayne Bay, a tax of 22 mills on each dollar of assessed valuation, as shown by the Town Assessment Roll, equalized, confirmed and approved by the Council.

Section 2. That there be, and there is hereby levied, and assessed upon all the taxable property within the Town of North Miami, lying west of Biscayne Bay, a tax of 22 mills on each dollar of assessed valuation, as shown by the Town Assessment Roll, equalized, confirmed and approved by the Town.

Section 3. That the Town Tax Assessor be, and he is hereby directed to issue and annex to said Assessment Roll, his Warrant, in form substantially as follows, to-wit:

"State of Florida,
County of Dade,
Town of North Miami.

To: J. H. Gribble,
Tax Collector of the Town of North Miami:

You are hereby commanded to collect out of the real estate and personal property, and from each of the persons and corporations named in the annexed Roll, the taxes set down in each Roll opposite each name, corporation or parcel of land therein described by law, you are to collect the same by levy and sale of the goods and chattels, lands and tenements so assessed, or of the person or corporation so taxed; and all sums collected you are to pay to the Town Treasurer; and you are further required to make all collections on or before the first Monday in April and on or before the first Monday in July you will make a final report to and settlement with the Town Treasurer and the Town Council.

Given under my hand and seal this 25th day of October, A. D. 1934.

J. H. GRIBBLE,
Tax Assessor—Town of
226 North Miami."

Such warrant shall remain in full force until all the taxes as assessed in said roll shall be collected.

(Signed) E. C. HARNER,
President of Council.

Approved:
(Signed) DANA W. ROBBINS,
Mayor.

I, E. May Avil, Town Clerk of the Town of North Miami, Florida, do Hereby Certify that the above and

foregoing is a Resolution regularly passed and adopted by the Town Council of the Town of North Miami, Florida, in regular session assembled this 25th day of October, A. D. 1934.

In Witness Whereof I hereunto set my hand and the official seal of the Town of North Miami, Florida, this 26th day of October, A. D. 1934.

(Signed) E. MAY AVIL,
(Seal) Town Clerk.

I, E, May Avil, Town Clerk of the Town of North Miami, Florida, do Hereby Certify that the above and foregoing is a true and correct copy of a resolution regularly passed and adopted by the Town Council of the Town of North Miami, at a meeting of the Council held on the 25th day of October, A. D. 1934.

In Witness Whereof, I have hereunto set my hand in the aforesaid official capacity, as also the seal of the said Town, on the 22nd day of July, A. D. 1935.

E. MAY AVIL,
(Town Seal) Town Clerk.

227 PLAINTIFF'S EXHIBIT No. 16, being a portion of the Miami Herald, a newspaper, has been certified to the Appellate Court by Order of the District Judge. See Page 425.

228 PLAINTIFF'S EXHIBIT No. 17.

T. J. Dowdell, Master, Sep. 4, 1935.

Resolution No. 614.

A Resolution, Determining the Amount to Be Raised by Taxation.

Whereas, The Town Council has considered estimates of the necessary and ordinary expenses and of

all special and extraordinary expenditures contemplated by the Town of North Miami, for which the revenue from the tax levy about to be made will be made available, and

Whereas, the Council has found that the total amount of such expenses and expenditures will be $57,637.74 over and above the amounts which will be raised from fines, forfeitures, occupational licenses, permit fees and other miscellaneous sources;

Now, Therefore, Be It Resolved by the Town Council of the Town of North Miami:

That $57,637.74 is hereby determined to be the amount of taxes necessary to be raised by the tax levy about to be made.

Passed and Adopted by the Council, October 19th, A. D. 1931.

(Signed) J. V. SHELLHORSE,
President.

Attest:
(Signed) JOHN A. MAHOOD,
Town Clerk.

Approved by the Mayor, October 19th, A. D. 1931.
(Signed) LOUIS NATHAN,
Mayor.

Attest:
(Signed) JOHN A. MAHOOD,
Town Clerk.

I, E. May Avil, Clerk of the Town of North Miami, Florida, do Hereby Certify that the above and foregoing is a true and correct copy of a resolution regularly passed and adopted by Town Council of the

Town of North Miami, at a meeting of the Council held on the 19th day of October, A. D. 1931.

In Witness Whereof, I have hereunto set my hand in the aforesaid official capacity, as also the seal of the said Town, on the 4th day of September, A. D. 1935.

E. MAY AVIL,
Town Clerk.

(Town Seal)

229 Budget Estimate for 1932.

Operating Expense.

Police Department for year ending Feb. 5, 1932	$5,000.00
Fire Department for year ending Feb. 5, 1932	2,000.00
Sanitary Department for year ending Feb. 5, 1932	1,500.00
Street Department (including lighting), Feb. 5, 1932	3,500.00
General Administrative year ending Feb. 5, 1932	8,000.00
Total Operating Expense	$20,000.00

Bond Expense.

General Improvement Bond Maturities	10,000.00	
General Improvement Bond Interest	9,300.00	
Sidewalk Improvement Bond Maturities	8,000.00	
Street Improvement Bond Maturities	2,000.00	
Interest on Street & Sidewalk Bonds	4,620.00	33,920.00

Additional Obligations.

Notes and interest payable, Fire Engine, Car and truck	4,700.00
Contingencies	6,517.74
Total Expense estimate for the year	65,137.74

Credits.

Miscellaneous Income, Fines, Permits, Licenses	500.00	
Water Department surplus over expense	1,000.00	
Delinquent Tax Collections	2,500.00	
Sidewalk Installments & Interest	3,500.00	7,500.00
Amount to be raised by taxation		$57,637.74

(Signed) JOHN A. MAHOOD,
Town Clerk & Assessor.

Total Assessment Value Town Property	$4,803,145.00
12 Mills levy on Assessment	$57,637.74

Resolution No. 615.

A Resolution Establishing and Determining the Tax Rate for the year 1931.

Whereas, The Town Council, sitting as an equalizing Board, has equalized, confirmed and approved a Tax Assessment Roll for the year 1931, and

230 Whereas, the Council has considered an estimate of the necessary and ordinary expenses, and of all special and extrordinary expenditures contemplated for the fiscal year ensuing, and for

which the revenue for the levy shortly to be made will be available;

Now, Therefore, Be It Resolved by the Town Council of the Town of North Miami:

Section 1. That there be, and there is hereby levied and assessed upon all taxable property in the Town of North Miami, a tax of 12 mills on each dollar of assessed valuation, as shown by the Town Assessment Roll, equalized, confirmed and approved by the Council.

Section 2. That the Town Tax Assessor be, and he is hereby directed to issue and annex to said Assessment Roll, his Warrant, in form substantially as follows, to-wit:

"State of Florida,
Town of North Miami.

To: L. H. Browning,
Tax Collector of the Town of North Miami:

You are hereby commanded to collect out of the real estate and personal property, and from each of the persons and corporations named in the annexed Roll, the taxes set down in each Roll opposite each name, corporation or parcel of land therein described by law, you are to collect the same by levy and sale of the goods and chattels, lands and tenements so assessed, or of the person or corporation so taxed; and all sums collected you are to pay to the Town Treasurer; and you are further required to make all collections on or before the first Monday in April and on or before the first Monday in July you will make a final report to

and settlement with the Town Treasurer and the Town Council.

Given under my Hand and Seal, this, the 19th day of October, in the year A. D. 1931.

(Signed) JOHN A. MAHOOD,
Town Tax Assessor—
Town of Miami
Shores."

231 Such warrant shall remain in full force until all the taxes as assessed in said roll shall be collected.

Passed and Adopted by the Council, October 19th, A. D. 1931.

(Signed) J. V. SHELLHORSE,
President.

Attest:
(Signed) JOHN A. MAHOOD,
Town Clerk.

Approved by the Mayor, October 19th, A. D. 1931.

(Signed) LOUIS NATHAN,
Mayor.

Attest:
(Signed) JOHN A. MAHOOD,
Town Clerk.

I, E. May Avil, Clerk of the Town of North Miami, Florida, do Hereby Certify that the above and foregoing is a true and correct copy of a resolution regularly passed and adopted by the Town Council of the Town of North Miami, at a meeting of the Council held on the 19th day of October, A. D. 1931.

In Witness Whereof, I have hereunto set my hand in the aforesaid official capacity, as also the seal of

the said Town, on the 4th day of September, A. D. 1935.

E. MAY AVIL,
(Town Seal) Town Clerk.

.232 Pursuant to Stipulation of the parties, dated July 22, 1935, and copied in full at Page 109 of this Transcript, the documentary evidence made a part of the Master's Report, which said evidence was filed in the case of United States of America ex rel., Brown-Crummer Investment Company, Petitioner, vs. Town of North Miami et al, Respondents, No. 1717 M Law, is copied in full as follows:

PLAINTIFF'S EXHIBIT No. 1.

T. J. Dowdell, Commissioner, July 21, 1932.

In the United States District Court in and for the Southern District of Florida. No. 1571-M.

The Brown-Crummer Investment Company, a corporation organized and existing under and by virtue of the Laws of the State of Kansas, Plaintiff,

vs.

Town of Miami Shores, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida, Defendant.

Final Judgment.

This cause coming on to be heard upon the motion of the Plaintiff, The Brown-Crummer Investment Company, a corporation, organized and existing under and by virtue of the laws of the State of Kansas, by Giles J. Patterson, its attorney, for the entry of final judgment, and it appearing to the Court from the

stipulation heretofore made and entered into by and between the attorneys of record for the respective parties hereto, and filed in this cause, that the demurrer heretofore filed by the defendant be, and the same has been, withdrawn, and that judgment for the aggregate amount of bonds and interest coupons sued on in the several counts of plaintiff's declaration is agreed to be entered in favor of the plaintiff and against the defendant, together with the costs of this suit to be taxed herein, on motion of the plaintiff's attorney, the default of the said defendant is taken and the same is hereby entered of record.

233 Wherefore, the Plaintiff ought to have and recover of and from the defendant its damages sustained herein by reason of the premises. Thereupon reference is had to the Court to assess the Plaintiff's damages herein. The Court having considered the record herein and the exhibits produced before the Court and offered in evidence to the Court in support of Plaintiff's motion for Final Judgment, and it appearing from the declaration filed herein and from the exhibits tendered in evidence and from the original bonds and coupons filed in said cause, together with plaintiff's motion for judgment, that the said defendant, Town of Miami Shores, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida, is indebted to the plaintiff, The Brown-Crummer Investment Company, a corporation, in the sum of $9,000.00, principal sum due on bonds heretofore tendered and filed in evidence, together with the sum of $2790.00, being the principal sum due on the interest coupons heretofore tendered and filed in evidence, it is thereupon considered

Ordered and Adjudged by the Court that the plaintiff, The Brown-Crummer Investment Company do have and recover from the defendant, Town of Miami

Shores, the sum of Eleven Thousand Seven Hundred and Ninety Dollars—($11,790.00)—damages, together with all the costs of this suit herein taxed at $12.50, for which let execution issue.

Done and Ordered in Chambers at Miami, Florida, this 19th day of June, A. D. 1931.

HALSTED L. RITTER,
Judge.

Certified copy.

United States of America,
Southern District of Florida, ss.

I, Edwin R. Williams, Clerk of the United States District Court in and for the Southern District of Florida, do hereby certify that the annexed and foregoing is a true and full copy of the original Final Judgment, filed at Miami, Florida, June 19, 1931, in case No. 1571-M-Civil, The Brown-Crummer Investment Co., vs. Town of Miami Shores, as entered in Judgment Book No. 1, Page 496 now remaining among the records of the said Court in my office.

234

In Testimony Whereof, I have hereunto subscribed my name and affixed the Seal of the aforesaid Court at Miami this 8th day of September, A. D. 1931.

EDWIN R. WILLIAMS,
Clerk.
By EARLE F. SPRIGG,
Deputy Clerk.

(U. S. District Court Seal).

PLAINTIFF'S EXHIBIT No. 2.

T. J. Dowdell, Commissioner. 7-21-'32.

In the United States District Court in and for the Southern District of Florida.

The Brown-Crummer Investment Company, a corporation organized and existing under and by virtue of the laws of the State of Kansas, Plaintiff,

v.

Town Of Miami Shores, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida, Defendant.

Declaration.

Comes now the Plaintiff, The Brown-Crummer Investment Company, a corporation, by Giles J. Patterson, its attorney, and sues the Defendant, The Town of Miami Shores, a municipal corporation, for that:

Paragraph A.

The Plaintiff, the Brown-Crummer Investment Company, is a corporation organized and existing under and by virtue of the laws of Kansas, and is a citizen thereof; the Defendant, the Town of Miami Shores, is a municipal corporation organized and existing under and by virtue of the laws of the State of Florida, and is a citizen of the State of Florida; said Town of Miami Shores is now and was at the time hereinafter mentioned a municipal corporation acting under and by virtue of the laws of the State of Florida; the amount involved in controversy in this suit exceeds the sum of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs.

235 First Count.

(1) The Plaintiff alleges all the facts and things alleged in Paragraph A hereof and by express reference Paragraph A is made a part hereof. The Plaintiff further alleges that said Town of Miami Shores did on to wit the first day of March, A. D. 1928, issue certain sidewalk improvement bonds in the total amount of Nine Thousand ($9,000.00) Dollars. Said bonds bore interest from the date of the same at the rate of six per cent. (6%) per annum, payable semi-annually on the first day of March and on the first day of September of each year, upon the presentation and surrender of interest coupons which were annexed to said bonds, principal and interest payable at the office of the United States Mortgage & Trust Company in the City of New York, State of New York.

(2) The bonds recited that they were issued in pursuance of Chapter 9298 of the laws of Florida, and of resolution of the Town Council of the Town of Miami Shores duly adopted, for the cost payable by special assessment of laying and paving sidewalks along certain streets in said Town. It was thereby certified that the issue of bonds was within every debt and other limits prescribed by the Constitution and Laws of Florida, and was made in strict conformity with the Constitution and Laws of Florida and the resolution of the Town Council of the Town of Miami Shores authorizing the same, and all proceedings essential to the validity of these bonds were performed, and that for the payment of the same the full faith and credit of the Town of Miami Shores was pledged, and that provision was made for the levy and collection, each year, while any of said bonds were outstanding and unpaid, of sufficient taxes on all taxable property in said Town to pay the principal and interest of this bond and the other bonds of this issue as the same become due and payable so far as such

taxes may be necessary for that purpose. Said bonds were duly signed by the Mayor and the Town Clerk and sealed with the seal of the said Town. The issue was validated and confirmed by decree of the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, rendered on the 7th day of May, A. D. 1925; that attached to each of said bonds is a validation certificate signed by the Clerk of
236 the Circuit Court of Dade County, Florida, and his official seal affixed thereto.

Each of the said bonds is the same except as to the number and maturity date thereof; that the Plaintiff is the owner, holder and bearer of bond No. 2 of said issue, which matured on the first day of March, A. D. 1930, copy of the said bond being attached hereto and made a part hereof for all purposes, and marked Exhibit "A"; that said bond is a negotiable instrument issued by said Defendant and held by the Plaintiff herein in due course for value as above set forth; that the Plaintiff alleges that neither this bond nor any part thereof was paid on the maturity date, March 1, 1930, or any time thereafter,

Wherefore, the Plaintiff brings this suit and claims Twenty Five Thousand ($25,000.00) Dollars damages

Second Count.

The Plaintiff alleges all the facts and things alleged in Paragraph A hereof and by express reference said Paragraph A is made a part of this count. Plaintiff further alleges that the Town of Miami Shores did on the first day of March, A. D. 1928, issue street improvement bonds of the said Town of Miami Shores in the total amount of Six Thousand ($6,000.00) Dollars, known as street improvement bonds. The bonds were made payable to bearer and bore interest at the

rate of six per cent. (6%) per annum from the date of issuance thereof, payable semiannually on the first days of September and March of each year upon the presentation and surrender of interest coupons which were annexed to said bonds; both principal and interest being payable at the office of the United States Mortgage & Trust Company in the City of New York, State of New York; each of the bonds recites that this bond is one of a series of six bonds of like tenor, except as to number and date of maturity, and is issued in pursuance of Chapter 9298 of the Laws of Florida, and of Resolution of the Town Council of the Town of Miami Shores duly adopted, for the costs payable by special assessment of paving streets in said town. It was thereby certified that the issue of bonds, of which this bond is one, is within every debt and
237 other limit prescribed by the Constitution and Laws of Florida, and was made in strict conformity with the Constitution and Laws of Florida and the Resolutions of the Town Council of the Town of Miami Shores authorizing the same; that all proceedings essential to the validity of these bonds have been performed; and that for the payment of the same the full faith and credit of the Town of Miami Shores was pledged, and that provision was made for the levy and collection, each year, while any of said bonds are outstanding and unpaid, of sufficient taxes on all taxable property in said Town to pay the principal and interest of this bond and the other bonds of this issue as the same become due and payable so far as such taxes may be necessary for that purpose. Said bonds were duly signed by the Mayor and the Town Clerk and sealed with the seal of the said Town; said bonds bore a validation certificate signed by the Clerk of the Circuit Court of Dade County, Florida, stating that the said bonds were validated and confirmed by decree of the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, rendered on the 7th day of May, A. D. 1928, and the seal of said Court was affixed thereto.

Each of the said bonds is the same except as to the number and maturity date thereof; that the Plaintiff is the owner, holder and bearer of bond No. 2 of said issue, which matured on the first day of March, A. D. 1930, copy of the said bond being attached hereto and made a part hereof for all purposes, and marked Exhibit "B". The Plaintiff alleges that the said bond was not paid nor any part thereof, and is now overdue and unpaid.

Wherefore, the Plaintiff brings this suit and claims Twenty Five Thousand ($25,000.00) Dollars damages.

Third Count.

The Plaintiff alleges all the facts and things alleged in Paragraph A hereof and by express reference Paragraph A is made a part hereof. The Plaintiff further alleges that said Town of Miami Shores did on to wit the first day of April, 1927, issue certain sidewalk improvement bonds in the total amount of Seventy Four Thousand ($74,000.00) Dollars. Said bonds bore interest from the date of the same at the rate
238 of six per cent. (6%) per annum, payable semiannually on the first day of October and the first day of April of each year, upon the presentation and surrender of interest coupons which were annexed to said bonds, both principal and interest payable at the office of the United States Mortgage & Trust Company in the City of New York, State of New York.

The bonds recited that they were issued in pursuance of Chapter 9298 of the Laws of Florida, and of resolution of the Town Council of the Town of Miami Shores duly adopted for the cost payable by special assessment of laying and paving sidewalks along certain streets in said Town. It was thereby certified

that the issue of bonds was within every debt and other limit prescribed by the Constitution and Laws of Florida, and was made in strict conformity with the Constitution and Laws of Florida and the Resolutions of the Town Council of the Town of Miami Shores authorizing the same; and all proceedings essential to the validity of these bonds were performed, and that for the payment of the same the full faith and credit of the Town of Miami Shores was pledged, and that provision was made for the levy and collection, each year, while any of said bonds are outstanding and unpaid, of sufficient taxes on all taxable property in said Town to pay the principal and interest of this bond and the other bonds of this issue as the same become due and payable, so far as such taxes may be necessary for that purpose. Said bonds were duly signed by the Mayor and the Town Clerk and sealed with the seal of the said Town. The issue was validated and confirmed by decree of the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, rendered on the twentieth day of April, A. D. 1927; that attached to each of said bonds is a validation certificate signed by the Clerk of the Circuit Court of Dade County, Florida, and his official seal affixed thereto.

Each of the said bonds is the same except as to the number and maturity date thereof; that the Plaintiff is the owner, holder and bearer of bonds Nos. 15 to 21, both inclusive, of said issue, which matured on the first day of April, A. D. 1930, copy of one of the said bonds being attached hereto and made a part hereof for all purposes, and marked Exhibit "C"; that
239 said bonds are negotiable instruments issued by said Defendant and held by the Plaintiff herein in due course for value as above set forth; that the Plaintiff alleges that these bonds were not paid nor any part thereof on the maturity date, and are now overdue and unpaid.

Wherefore, the Plaintiff brings this suit and claims Twenty Five Thousand ($25,000.00) Dollars damages.

Fourth Count.

The Plaintiff alleges all the facts and things alleged in Paragraph A hereof and by express reference Paragraph A is made a part hereof. The Plaintiff further alleges that said Town of Miami Shores did on to wit the first day of January, A. D. 1927, issue certain general improvement bonds in the total amount of One Hundred Seventy Five Thousand ($175,000.00) Dollars. Said bonds bore interest from the date of the same at the rate of six per cent. (6%) per annum, payable semiannually on the first day of January and the first day of July of each year, upon the presentation and surrender of interest coupons which were annexed to said bonds, both principal and interest payable at the office of the United States Mortgage & Trust Company in the City of New York, State of New York.

The bonds recited that they were issued for the purpose of paying the cost of certain permanent municipal improvements, under the authority of and in full compliance with the laws of the State of Florida, and has been authorized by a two-third vote of the qualified electors of said Town, who are owners of real estate and who have paid the taxes thereon for the year when such taxes were last due, and who are also freeholders of said Town, voting at an election legally called and held. It was thereby certified that all acts, conditions and things required to exist or to be done precedent to and in the isuance of this bond, under the Constitution and Laws of Florida, had happened, existed and been performed; that provision had been made for the levy and collection of a direct annual tax upon all taxable property within said Town, sufficient to pay the interest and principal of this bond as the same shall become due, and that the total indebtedness of said Town, including these bonds does not exceed

any constitutional or statutory limitations.
240 Said bonds were duly signed by the Mayor and the Town Clerk and sealed with the seal of the said Town. The issue was validated and confirmed by decree of the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida; that attached to each of said bonds is a validation certificate signed by the Clerk of the Circuit Court of Dade County, Florida, and his official seal affixed thereto.

Each of the said coupons is the same except as to the number and maturity date thereof; that the Plaintiff is the owner, holder and bearer of coupons No. 7, from bonds Nos. 21 to 25, inclusive, 31 to 40, inclusive, 61 to 65, inclusive, 72 to 74 inclusive, 81 to 85 inclusive, and 101 to 165 inclusive, of said issue, which matured on the first day of July, A. D. 1930, copy of one of the said bonds and one of the said coupons being attached hereto and made a part hereof for all purposes, and marked Exhibit "D"; that said coupons are of a par value of $30.00 each. Said coupons are negotiable instruments issued by said Defendant and held by the Plaintiff herein in due course for value as above set forth; that the Plaintiff alleges that these coupons were not paid nor any part thereof on the maturity date, and are now overdue and unpaid.

Wherefore, the Plaintiff brings this suit and claims Twenty Five Thousand ($25,000.00) Dollars damages.

GILES J. PATTERSON,
Attorney for the Plaintiff.

Attest a true copy:

EDWIN R. WILLIAMS,
Clerk, U. S. District Court
Southern District of Florida.
By RUTH J. ROSEMOND,
Deputy Clerk.

Copies of causes of action attached hereto.

Certified copy.

United States of America,
Southern District of Florida, ss.

I, Edwin R. Williams, Clerk of the United States District Court in and for the Southern District of Florida, do hereby certify that the annexed and foregoing is a true and full copy of the original
241 Declaration, In Re: The Brown-Crummer Investment Company, Plaintiff vs. Town of Miami Shores, Defendant, No. 1571-M-Civ. now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Miami this 21 day of July A. D. 1932.

EDWIN R. WILLIAMS,
Clerk.
By RUTH J. ROSEMOND,
Deputy Clerk.

(U. S. District Court Seal).

242 PLAINTIFF'S EXHIBIT 3 is a section of the Miami Herald, a newspaper, the original of which has been certified to the Appellate Court by the District Judge. See page 425 of this transcript.

243 PLAINTIFF'S EXHIBIT No. 4.

T. J. Dowdell, Master. July 29, 1932.

Copy.

United States of America.

No. 2 No. 2.

State of Florida,
County of Dade,
Town of Miami Shores.

Sidewalk Improvement Bond.

$1,000 $1,000

The Town of Miami Shores, Florida, for value received, hereby promises to pay to the bearer, the sum of One Thousand Dollars gold coin of the United States, on the first day of March, 1930, with interest thereon at the rate of six percent (6%) per annum, payable semi-annually on the first day of March and the first day of September of each year upon surrender of the interest coupons attached hereto as they severally become due and payable, both principal and interest payable at the United States Mortgage & Trust Company, in the City of New York.

This bond is one of a series of nine bonds of like tenor except as to number and date of Maturity, and is issued in pursuance of Chapter 9298 of the Laws of Florida, and of Resolution of the Town Council of the Town of Miami Shores duly adopted, for the cost payable by special assessment of laying and paving sidewalks along certain streets in said Town.

It is hereby certified that the issue of bonds, of which this is one, is within every debt and other limit prescribed by the constitution and Laws of Florida, and is made in strict conformity with the Constitution and Laws of Florida and the Resolutions of the Town Council of the Town of Miami Shores authorizing the

same; that all proceedings essential to the validity of these bonds have been performed; and that for the payment of the same the full faith and credit of the Town of Miami Shores is pledged, and that
244 provision has been made for the levy and collection, each year, while any of said bonds are outstanding and unpaid, of sufficient taxes on all taxable property in said Town to pay the principal and interest of this bond and the other bonds of this issue as the same become due and payable so far as such taxes may be necessary for that purpose.

In Witness Whereof, The Town of Miami Shores, Florida, has caused this bond, bearing date the first day of March 1928, to be signed by its Mayor, and Town Clerk and its corporate seal to be hereto affixed, and the interest coupons hereto attached to be signed by the facsimile signatures of said officers as of the first day of March, 1928.

(Signed) J. B. JEFFRIES,
Mayor.

(Seal) TOWN OF MIAMI SHORES,

(Signed) H. H. HAWTHORNE,
Town Clerk.

EXHIBIT "A".

Copy.

Certificate.

The within is one of a series of 9 bonds aggregating Nine Thousand Dollars. Par Value, and the signatures and seal thereon are genuine.

UNITED STATES MORTGAGE AND TRUST COMPANY,

(Signed) By Assistant Secretary.

Dated July 2, 1928.

The original opinion of Messrs. Caldwell and Raymond, relative to the legality of the within issue, is filed for the inspection of the holder hereof, with the United States Mortgage and Trust Company, 55 Cedar Street, New York City.

Validated and confirmed by decree of the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, rendered on the 7th day of May, A. D. 1928.

(Signed) E. B. LEATHERMAN,
(Seal) Clerk of the Circuit Court of Dade Co., Florida.

245 Certified copy.

United States of America,
Southern District of Florida, ss.

I, Edwin R. Williams, Clerk of the United States District Court in and for the Southern District of Florida, do hereby certify that the annexed and foregoing is a true and full copy of the original "Exhibit A" attached to Declaration in Re: The Brown-Crummer Investment Company, vs. Town of Miami Shores, No. 1571-M-Civil. now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Miami this 29th day of July, A. D. 1932.

EDWIN R. WILLIAMS,
Clerk.
By RUTH J. ROSEMOND,
Deputy Clerk.

(U. S. District Court Seal).

BUILDING PERMIT

Owner of Building Indian Cr Golf Club Inc
Architect Robt Hanglow
Contractor or Builder The St Johns Co

Town of Miami Shores

OFFICE OF BUILDING DEPARTMENT
MIAMI SHORES, FLORIDA

No. 238
Plaintiff's Ex #5.
J. S. Bowdell
Master. 7-29-32
192

No.	STREET	Part of Lot	Lot	Block	SUBDIVISION
					Indian Cr Golf Club Estates

Front	Depth	Height	Stories	Built of	Manner of Construction	To be completed	Cost	Permit Fee
86	98		1		Frame	60 days	13000	14 00

This Permit is hereby granted to The St Johns Co Inc to Erect the building above described, as per application No. ..... filed in this office. This permit is granted upon the express condition that all the facts stated in the application are true, and that the construction complies strictly with the plans and specifications submitted, and in accordance with the building laws of the State of Florida and with the building ordinances and code of the Town of Miami Shores, and rules and regulations of the Building Department of the Town of Miami Shores. This Permit may be revoked at any time upon the violation of any provisions of said laws, ordinances, or rules and regulations, or upon any change in plans and specifications unauthorized by this Department.

OBSTRUCTING STREET: Materials such as are to be used in the work or for construction purposes may be piled in the street by the contractor, but only in such manner as not to cause needless obstruction to traffic, and the contractor is not to use more than one-third of width of the street in any case for construction purposes.

All sidewalks, gutters, drains, roadways and private driveways within the block in which work is being done are to be kept open by the contractor for their intended use.

As soon as the work is finished, all accumulated rubbish or surplus materials, forms, tools and equipment shall be promptly removed from the street by the contractor.

J. S. Oberling
Building Commissioner.

IN CONSIDERATION of the issuance to me of the foregoing Building Permit, I hereby agree to do the proposed construction in strict conformity with the application and the plans and specifications thereof heretofore by me submitted, and in compliance with all provisions of all building laws of the State of Florida, all the building ordinances and codes of the Town of Miami Shores, and all rules and regulations of the Building Department of the Town of Miami Shores.

Dated May 29 192 30

The St Johns Co Inc
By H Lee

299

BUILDING PERMIT

Owner of Building Sun Hotel Corp

Architect Russell Pancoast Inc

Contractor or Builder Jno. B. Orr Inc

Town of Miami Shores

OFFICE OF BUILDING DEPARTMENT

MIAMI SHORES, FLORIDA

No. 242

June 24, 1930

No.	STREET	Part of Lot	Lot	Block	SUBDIVISION
	Ocean Drive Bet 91 St & 92 St		Together 1 to 9	One	Plat Book Page 44

Front	Depth	Height	Stories	Built of	Manner of Construction	To be completed	Cost	Permit Fee
		3			Reinforced Conc.	Jan 1st 1931	$285 000 00	385 00

Jno. B. Orr. Inc Cont

This permit is hereby granted to ..... to ..... the building above described, as per application No. 242 filed in this office. This permit is granted upon the express condition that all the facts stated in the application are true, and that the construction complies strictly with the plans and specifications submitted, and in accordance with the building laws of the State of Florida and with the building ordinances and code of the Town of Miami Shores, and rules and regulations of the Building Department of the Town of Miami Shores. This Permit may be revoked at any time upon the violation of any provisions of said laws, ordinances, or rules and regulations, or upon any change in plans and specifications unauthorized by this Department.

OBSTRUCTING STREET: Materials such as are to be used in the work or for construction purposes may be piled in the street by the contractor, but only in such manner as not to cause needless obstruction to traffic, and the contractor is not to use more than one-third of width of the street in any case for construction purposes.

All sidewalks, gutters, drains, roadways and private driveways within the block in which work is being done are to be kept open by the contractor for their intended use.

As soon as the work is finished, all accumulated rubbish or surplus materials, forms, tools and equipment shall be promptly removed from the street by the contractor.

J. P. Chambers

..... Building Commissioner.

IN CONSIDERATION of the issuance to me of the foregoing Building Permit, I hereby agree to do the proposed construction in strict conformity with the application and the plans and specifications thereof heretofore by me submitted, and in compliance with all provisions of all building laws of the State of Florida, all the building ordinances and codes of the Town of Miami Shores, and all rules and regulations of the Building Department of the Town of Miami Shores.

Dated 24th day of June, 1930

John B Orr Inc

By Thos Hammock

300

BUILDING PERMIT

Owner of Building Surf Club
Architect Russell Pancoast
Contractor or Builder Raymond Concrete Pile Co

Town of Miami Shores
OFFICE OF BUILDING DEPARTMENT
MIAMI SHORES, FLORIDA

No. 240

June 3, 1930

No.	STREET	Part of Lot	Lot	Block	SUBDIVISION
	92nd		A1-9	1	Alton Dalmar #4

Front	Depth	Height	Stories	Built of	Manner of Construction	To be completed	Cost	Permit Fee
					Conc Piling	90 days	17,670	20 00

This Permit is hereby granted to Surf Club to Raymond Concrete Pile Co the building above described, as per application No. 240 filed in this office. This permit is granted upon the express condition that all the facts stated in the application are true, and that the construction complies strictly with the plans and specifications submitted, and in accordance with the building laws of the State of Florida and with the building ordinances and code of the Town of Miami Shores, and rules and regulations of the Building Department of the Town of Miami Shores. This Permit may be revoked at any time upon the violation of any provisions of said laws, ordinances, or rules and regulations, or upon any change in plans and specifications unauthorized by this Department.

OBSTRUCTING STREET: Materials such as are to be used in the work or for construction purposes may be piled in the street by the contractor, but only in such manner as not to cause needless obstruction to traffic, and the contractor is not to use more than one-third of width of the street in any case for construction purposes.

All sidewalks, gutters, drains, roadways and private driveways within the block in which work is being done are to be kept open by the contractor for their intended use.

As soon as the work is finished, all accumulated rubbish or surplus materials, forms, tools and equipment shall be promptly removed from the street by the contractor.

J. J. Zberling
Building Commissioner.

IN CONSIDERATION of the issuance to me of the foregoing Building Permit, I hereby agree to do the proposed construction in strict conformity with the application and the plans and specifications thereof heretofore by me submitted, and in compliance with all provisions of all building laws of the State of Florida, all the building ordinances and codes of the Town of Miami Shores, and all rules and regulations of the Building Department of the Town of Miami Shores.

Dated June 3rd, 1930

Geo P Maxwell
per [illegible]

301

BUILDING PERMIT

Owner of Building Ocean Beach Heights Inc — Town of Miami Shores — No. 236

Architect Same

Contractor or Builder Same

OFFICE OF BUILDING DEPARTMENT
MIAMI SHORES, FLORIDA

2/11/30, 192-

No.	STREET	Part of Lot	Lot	Block	SUBDIVISION
		—			Ocean Beach Heights

Front	Depth	Height	Stories	Built of	Manner of Construction	To be completed	Cost	Permit Fee
					Frame		$150	$1.50

This Permit is hereby granted to Chas B Hannack to the building above described, as per application No. filed in this office. This permit is granted upon the express condition that all the facts stated in the application are true, and that the construction complies strictly with the plans and specifications submitted, and in accordance with the building laws of the State of Florida and with the building ordinances and code of the Town of Miami Shores, and rules and regulations of the Building Department of the Town of Miami Shores. This Permit may be revoked at any time upon the violation of any provisions of said laws, ordinances, or rules and regulations, or upon any change in plans and specifications unauthorized by this Department.

OBSTRUCTING STREET: Materials such as are to be used in the work or for construction purposes may be piled in the street by the contractor, but only in such manner as not to cause needless obstruction to traffic, and the contractor is not to use more than one-third of width of the street in any case for construction purposes.

All sidewalks, gutters, drains, roadways and private driveways within the block in which work is being done are to be kept open by the contractor for their intended use.

As soon as the work is finished, all accumulated rubbish or surplus materials, forms, tools and equipment shall be promptly removed from the street by the contractor.

H A Lien Jr

JMIA Building Commissioner.

IN CONSIDERATION of the issuance to me of the foregoing Building Permit, I hereby agree to do the proposed construction in strict conformity with the application and the plans and specifications thereof heretofore by me submitted, and in compliance with all provisions of all building laws of the State of Florida, all the building ordinances and codes of the Town of Miami Shores, and all rules and regulations of the Building Department of the Town of Miami Shores.

Dated , 192

250 EXHIBIT DEFT. (also marked Intervener's "E")—Information in Quo Warranto Proceedings Against Town of North Miami, Florida State Court. (Same as Exhibit "B," page 84.)

REALTOR'S EXHIBIT "A"—Transcript of proceedings held Feb. 5, 1926 for Incorporation of the Town of Miami Shores, omitted from the printed record, being heretofore copied at pages 92 et seq.

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264 Next follows a photostatic copy of a map, which is the same as the map attached to the Answer of Ocean Beach Heights, Inc., marked "RELATORS' EXHIBIT B," and shown on page 103 of this transcript.

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265 WRIT OF QUO WARRANTO.

In the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County. Quo Warranto. No. 12239.

State of Florida, ex rel, Fred H. Davis, Attorney General, Relator,

North Island Investment Company, a corporation, Indian Creek Golf Club a corporation, The Normandy Beach Development Company, a corporation, Lucille F. Ensign, joined by her husband, Walter C. Ensign, Co-Relators,

vs.

L. H. Harrington, Louis Nathan, H. Goodrich, John A. Mahood, William Bennett, Jack Bettles, John V. Shellhorse, H. H. Hawthorne, C. A. McDonald, and Town of Miami Shores, a pretended municipal corporation, Respondents.

In the name of the State of Florida:

To all and singular the Sheriffs of the State of Florida:

You are hereby commanded to summon the respondents, L. H. Harrington, Louis Nathan, H. Goodrich, John A. Mahood, William Bennett, Jack Bettles, John V. Shellhorse, H. H. Hawthorne, and C. A. McDonald, that they be before one of the Judges of this Court on the 15th day of Aug. A. D. 1929 to show Quo Warranto (by what right) or by what warrant or authority of law they claim to exercise offices, franchises, liberties and powers as the Town of Miami Shores, a pretended municipal corporation.

You are also commanded to summon the respondent, Town of Miami Shores, a pretended municipal corporation, that it be before this Court on—the 15 day of Aug. A. D. 1929 to show Quo Warranto (by what right) or by what warrant or authority of law it claims to exercise offices, franchises, liberties and powers as a municipal corporation over the following described land, situate, lying and being in Dade County, Florida, to-wit:

Commencing for a point of beginning at the intersection of the high water mark of the Atlantic Ocean with the south boundary line of fractional
266 Section 35 in Township 52 South, Range 42 East, Dade County, Florida, run west along the south boundary of Section 35 and continue along the south line of Sections 33 and 34 to the intersection of the eastern boundary of the City of Miami; thence north northeasterly along the said eastern limits of the City of Miami, produced a distance of 2750 feet; thence in a northeasterly direction to the northeast corner of fractional Section 27, Township 52 South, Range 42 East; thence continue in a northeasterly direction deflecting to the left from the last mentioned course to

the northeast corner of the southwest one quarter (SW¼) of the southwest one-quarter (SW¼) of a fractional Section 23-52-42; thence north along the east line of the west one-half (W½) of the west one-half (W½) of fractional Section 23-52-42 the north boundary of said Section 23; thence east along the said north boundary line of said Section 23 to the intersection of the high water mark of Atlantic Ocean; thence continue east along the last mentioned course produced a distance of 1500 feet; thence in a southerly direction parallel to and 1500 feet east of the high water meander line of the Atlantic Ocean to the south line of fractional Section 35, Township 52 South, Range 42 East, produced easterly; thence west along the last said south line of Section 35 to the point of beginning.

In Witness Whereof I, Paul D. Barns, one of the Judges of said Court, here unto set my hand and have here unto caused the seal of this Court to be affixed, and this writ to be signed thereof, this 31st day of July, A. D. 1929.

PAUL D. BARNS,
Judge of the Circuit Court.
E. B. LEATHERMAN,
Clerk of the Circuit Court.
By F. J. GOULD,
Deputy Clerk.

(Circuit Court Seal).

Filed this 13 day of Aug. A. D. 1929, and recorded in Circuit Court Minutes, No. 42 Page 465.

E. B. LEATHERMAN,
Clerk Circuit Court.
By H. GARDNER,
Deputy.

Sheriff's Office, Jul. 31, 9:44 AM 1929. Dade County, Florida.

267 ORIGINAL RETURN.

State of Fla. ex rel etc. et al.,
vs. No. 32.
L. H. Harrington et al.

Received this Writ of Quo Warranto on the 31st day of July, 1929 and served the same on July 31, 1929, in Dade County, Florida, upon the Town of Miami Shores, a pretended municipal corporation, the within named defendant, by delivering a true copy of this writ to H. H. Hawthorne, Town Clerk of the said corporation, in the absence of the Mayor, the highest official of said corporation to be found in Dade County, Florida, and by then and there showing to him this original and explaining to him the contents thereof.

After diligent search, failed to find the other within named defendants in Dade County, Florida.

Copy & return	.50
Service	1.00
16 miles	2.00
	3.50

R

M. P. LEHMAN,
Sheriff Dade County, Florida.
By W. P. BRION,
D. S.

ANSWER OF RESPONDENTS.

In the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County. Quo Warranto. No. 12239.

State of Florida, ex rel, Fred H. Davis, Attorney General, Relator,

North Island Investment Company, a corporation, Indian Creek Golf Club, a corporation, The Normandy Beach Development Company, a corporation, Lucille F. Ensign, joined by her husband, Walter C. Ensign, Co-Relators,

vs.

L. H. Harrington, Louis Nathan, H. Goodrich, John A. Mahood, William Bennett, Jack Bettles, John V. Shellhorse, H. H. Hawthorne, C. A. McDonald, and Town of Miami Shores, a municipal corporation, Respondents.

268 Come now the respondents, L. H. Harrington, Louis Nathan, H. Goodrich, John A. Mahood, William Bennett, Jack Bettles, John V. Shellhorse, H. H. Hawthorne, C. A. McDonald, and Town of Miami Shores, a municipal corporation organized and existing under the laws of the State of Florida, by and through their undersigned attorneys, and file this their joint and separate answer to the information filed herein by the State of Florida on the relation of Fred H. Davis, Attorney General relator, and co-relators, and without waiving their demurrer and motion to quash, filed herein, but relying on each and every ground thereof, and now and at all times hereafter reserving unto themselves the benefit and advantage of exceptions to the manifold errors, imperfections and insufficiencies in said information con-

tained, and for answer to the said information these respondents say:

1. They deny that they have usurped any authority or do now usurp any authority whatever, but for complete answer to said allegations respondents say that respondent Town of Miami Shores is a valid, existing, municipal corporation, established and organized under the laws of the State of Florida, and has all the rights, privileges and authority of other municipal corporations in this state, and that it is situated within Dade County, in the State of Florida; that respondent, L. H. Harrington is the duly elected, authorized and acting Mayor of respondent Town of Miami Shores; that respondents Louis Nathan, H. Goodrich, John A. Mahood, William Bennett, Jack Bettles and John V. Shellhorse are the duly elected, authorized and acting Councilmen of said respondent Town; that respondent H. H. Hawthorne is the duly elected, authorized and acting City Clerk, Tax Assessor and Treasurer of said Town of Miami Shores; that C. A. McDonald is the duly elected, authorized and acting Tax Collector and Town Marshal of said respondent Town; and respondents admit jointly and separately that said officials do perform and exercise all the liberties, privileges and franchises of an incorporated town; and it is positively denied that they are in any way "usurping to be a municipal corporation"; and they deny that they have acted in any manner to the prejudice and wrong of the people of the State of Florida; and it is further denied that respondent Town of Miami Shores has never been organized according to law, and that it is without legal existence, but on the contrary, respondents say that said Town of Miami Shores was organized and established strictly in accord-
269 ance with all the provisions of the General Law of this State, and particularly under the laws of the State of Florida, embraced in Sections 1825 et seq., of the Revised General Statutes, 1920, of

the State of Florida; and respondents further deny that the said statutes under which its corporate existence is claimed are unconstitutional and void, and that they are attempting to hold such offices and enjoying such franchises without lawful authority, and that they are acting to the prejudice and wrong of the people of the State of Florida, or to the corelators particularly.

2. It is admitted that the respondents have in the past exercised and do now exercise the rights of a municipal corporation over the lands described in the second paragraph of the information; but it is positively denied that the respondents are exercising such rights to the prejudice and wrong of the people of the State of Florida or to the corelators.

3. It is admitted that the registered voters of the respondent Town of Miami Shores met on the 5th day of February, 1926, and organized and established a municipal corporation under the statutes mentioned in the third paragraph of the information, and according to the proceedings as shown by the certified copy thereof filed as "Relators Exhibit A" to the information and made a part thereof; and respondents now admit that said Exhibit A is a true and correct copy of said proceedings in which respondent Town of Miami Shores was established as a municipality; and in this connection respondents state that the territory described in the information is only a part of the territory embraced within the original boundaries of said Town of Miami Shores, a full and complete description of which is set out in Relators Exhibit A, to which reference is hereby expressly made for the complete and original boundaries of said Town, as organized and established in said proceedings contained in said Exhibit A.

4. It is admitted that the lands first described in said information lie east of Biscayne Bay, and respondents presume that it is true that the legal description of said land contains the sections as set out in the information; and they further admit that the copy filed as "Relators Exhibit B" portrays with reasonable correctness the relative position of said lands to the remaining portions of the Town of Miami Shores, and to the Town of Fulford, City of
270 Miami and City of Miami Beach; but respondents deny that the yellow lines on said map, which extend into the Atlantic Ocean, correctly describe any portion of the Town of Miami Shores, but respondents say that a reference to the description contained in Relators Exhibit A will show that the eastern boundary of the Town of Miami Shores is the coast line of the Atlantic Ocean.

5. These respondents are without knowledge as to the ownership of the lands described in the information and alleged to be owned respectively by the North Island Investment Company, the Indian Creek Golf Club, the Normandy Beach Company, and Lucille F. Ensign, and respondents therefore neither admit nor deny said ownership, but call upon relators for strict proof as to said allegations.

6. These respondents deny that the act of the registered voters of the community in attempting to incorporate said territory lying east of Biscayne Bay, was unlawful and void; and it is further denied that the Town has never incorporated said territory within its town limits; and it is denied that said territory is not a part of the community of Miami Shores, and that it is far removed and isolated from the community. It is denied that the said territory is separated from the community by Biscayne Bay, but, on the contrary, the said Biscayne Bay is also a part of the territory embraced within the Town of Miami Shores, although it is ad-

mitted that said Biscayne Bay Traverses the territory so embraced within the town limits from North to south. It is admitted that at this time there is no bridge or causeway crossing Biscayne Bay within the limits of the Town of Miami Shores, but it is denied that it is approximately ten miles from the Town Hall and center of said community to said territory described in the information; and it is further denied that said territory in most instances is rural land and wild, unimproved or covered with a thick and heavy growth of seagrape vine, palmettos, shrubs, bushes, scrub pine trees and other growths incident to lands lying near or contiguous to the Atlantic Ocean; but, on the contrary, respondents say that under the modern means of travel the Town Hall is easily accessible to all parts of the Town; and the territory described as lying east of Biscayne Bay is in no sense wild and unimproved, but all of said land has been subdivided into lots
271 and blocks and has been developed by filling in the low places, bulkheading the water fronts, and by the building of streets in front of said lots; that there is not an acre of said land which has not been so subdivided and improved, and at least 90% of it has been sold in lots for the purpose of building residences thereon; and it is denied that there are not more than 14 houses on said land, and that only five of said houses are occupied, or are fit for occupation; and it is also denied that there are not more than ten registered voters living in said territory; but, on the contrary, there are at least 25 houses within said territory, all of which are suitable for occupancy, and there are at least 50 registered voters living within the territory; and it is denied that at the time of the incorporation of said town the registered voters participating in the election and incorporation resided in the territory west of Biscayne Bay.

7. It is further denied that the said Town of Miami Shores has made no improvements on said property or

any portion thereof by way of building streets, sidewalks or roads or the laying out or grading or hard-surfacing of any streets or roads; and it is admitted that no sewers have been laid, but it is denied that no water mains have been placed, and it is denied that no improvements whatever have been made or are even in contemplation by the municipality within said territory; and it is emphatically denied that no benefits whatsoever have accrued to said property or any portion thereof, nor to any of the owners of said property; and it is denied that no benefits are probable or contemplated; and it is denied that the co-relators have been denied the equal protection of the laws and the enjoyment of their property, or that they have been deprived of their property without due process of law. It is admitted that lands of corelators have been taxed by the town for town purposes, but they deny that such taxation amounts to the taking of property without just compensation, or that it is confiscatory or in violation of the property rights of the corelators; and they deny that any acts of the respondents violate Sections 1 and 5, Article 9 of the Constitution, or any other constitutional provision.

It is positively denied that the property of the corelators is too remotely located from the built-up
272 portion of the municipality to receive any benefits therefrom, and it is denied that said built-up portion of the municipality is all west of Biscayne Bay; and it is denied that corelators cannot have a just valuation as a basis of assesment for municipal purposes or that they are being deprived of any of their constitutional rights and privileges; and it is denied that the lands of corelators are too remote from the business and residential section of the Town of Miami Shores to derive any benefit therefrom, or that they are receiving no benefits from said town; and it is denied that the only purpose of including said territory east of Biscayne Bay, and particularly the lands of co-

relators was that the same might be taxed to support the town government of the Town of Miami Shores, and to pay off any indebtedness created for the benefit of any other portion of the town; and it is denied that said territory east of Biscayne Bay and described in said information does not properly belong the community comprised of the Town of Miami Shores; and it is denied again that it is remote therefrom and inaccessible thereto, although it may be true, as alleged, that it is more accessible to the City of Miami Beach; but it is not true that said territory has been laid out upon a plan or as a part of the municipality of Miami Shores, but respondents say that said territory was laid out, mapped and platted, as will be hereinafter more particularly described, with a view of all of said property being used for residential purposes within a town or city. All allegations, statements and averments in said information contained not herein or heretofore specifically admitted or denied, are here and now generally denied to the same intent and purpose as if specifically referred to.

8. And now for further answer to said information, and for the purpose of showing by what right or warrant or authority of law respondents claim to exercise the offices, franchises, liberties and powers as the Town of Miami Shores, as commanded in the writ of quo warranto issued and served herein, these respondents respectfully state and show to the Court:

(a) Respondent Town of Miami Shores shows to the Court that it exercises the offices, franchises, liberties and powers of a municipality by virtue and under authority of certain proceedings had and conducted under Sections 1825 to 1985 of the Revised General Statutes of 1920 of the State of Florida, a certified copy of said proceedings being attached to the information, marked "Relator's Exhibit A", and said certified copy of said proceedings

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is here and now referred to and expressly made a part of this answer to the same extent and for the same purpose as if copied verbatim herein; and respondents aver and affirm that said laws of the State of Florida, above referred to, are constitutional and valid, and that said certified copy of the proceedings shows on its face that all of the provisions of said laws of the State of Florida were strictly complied with, and that said proceedings are valid in every respect, and that said Town of Miami Shores legally exists by virtue of said law and the proceedings thereunder; and the other respondents herein hold their offices and exercise their authority, powers and privileges as such officers after having been duly and legally elected by the voters of said municipality, at an election held in the year 1928, and after having been duly qualified under said laws to act in their respective capacities.

(b) These respondents further say that they are not only exercising municipal powers, offices and franchises over the lands described in the writ of quo warranto, but they exercise said powers, rights and authority over all of the lands described in Relator's Exhibit A as comprising the original boundary of said Town of Miami Shores; and they say that they are entitled, under the law, to exercise the same rights, offices and franchises over the territory described in said writ of quo warranto as any other portion of the territory embraced in said municipal boundaries.

(c) For further answer to the information and responding particularly to the command of said writ of quo warranto which requires respondents to show by what authority its powers, franchises and offices are exercised over an arbitrarily described portion of the territory embraced within the municipal boundaries, these respondents say that it will be necessary to relate certain historical facts dating from the organization of the town, as alleged in the information and herein ad-

mitted, and particularly is this necessary since it is patent from the allegations of the information, as well as the restricted scope of the writ of quo war-
274 ranto disclosed to the Court that the effort of this proceeding is to detach or dis-annex, in a manner not authorized by law, certain territory from an existing municipality arbitrarily chosen and defined by relators who claim to own only a small portion of the territory in question.

(d) Respondent Town of Miami Shores was incorporated, as stated, on the 5th day of February, 1926, at a time when every foot of land embraced within its boundaries was under development and had been or was being subdivided by various land owners into lots and blocks for the purpose of sale, and with a view of building residences, business houses and other edifices and structures found only in towns and cities, and particularly was this true of that section of the territory lying east of Biscayne Bay. Prior to that time, a large portion of the territory within the limits of the municipality, as defined, and particularly that portion lying on both sides of Biscayne Bay, had been low and marshy on account of the shallow waters of the Bay extending at times to the lower lands but the property owners along the Bay, realizing the enormous values of said land when properly filled and protected from the waters of the Bay, and following the example set by the land owners further south, in the City of Miami Beach, where enormous projects of improving such lands had resulted in great profits to their owners in sales for residential and other purposes after development, had, at the time of incorporating said Town, launched various and many different development projects and were so engaged in the improvement of said lands solely with a view of subdividing the same when improved, into town lots for sale. Developments of other kinds and in other forms were in process in other portions of the town, and property

owners in the territory embraced in the proposed limits of the town, realized the advantage of having a municipal corporation, to extend its government over the territory, and upon the organization as shown by Relators' Exhibit A, the sentiment was so unanimous for the establishment of said town that no property owner entered an objection in any form to the establishment of the town.

(e) Respondents further answering, say, among the various projects under development at the time of the establishment of the said Town of Miami Shores in the territory lying east of Biscayne Bay, as described in the information, was that known as Nor-
275 mandy Beach, claimed to be owned by the corelator, The Normandy Beach Development Company; another was what was then known and designated as Miami Shores Island, which was owned at said time by the Shoreland Company, a corporation, and embraced the lands now claimed to be owned by corelators North Island Investment Company, and Indian Creek Golf Club, a corporation, and comprised the two islands appearing on said map filed with the information; and the plans of development of said Miami Shores Island at said time contemplated filling the shallow waters of the Bay between the said two islands and around the shores thereof for a considerable distance, and the building of substantial bulkheads and other protections for the land of said island; elaborate landscaping and laying out of attractive streets and boulevards were embraced within the project, and the land of said island, as projected under said plan of development, was laid out in lots and blocks and a great part thereof sold to various purchasers all over the United States and a plat actually filed in the Circuit Court Clerk's office of Dade County, Florida, which said plat will be filed as evidence on the hearing of this cause. Said Normandy Beach Development Company has continued to func-

tion and has carried out more fully the greater part of its plan of subdivision and landscaping, and is now a highly restricted residential section, and a great many houses have been erected thereon by purchasers of lots; and the lot described in the information and alleged to be owned by the corelator, Lucille F. Ensign, was one of the town lots sold by said Normandy Beach Company in the plan of said development. Large developments of a similar nature on the land lying north of said Normandy Beach, and in fact, all of the distance north and south across the Town of Miami Shores, were inaugurated by the owners of said lands and were bulkheaded, subdivided, platted and sold as town property under the names of Altos Del Mar No. 1, Altos Del Mar No. 2, Altos Del Mar No. 3, Altos Del Mar No. 4, Altos Del Mar No. 5, and Altos Del Mar No. 6; a great many streets had been built by the developers of the various subdivisions so mentioned, electric lines, white ways, and other electric facilities were installed, water plants, pipes and connections had been placed therein by said developers in pursuance of their agreements given to the purchasers of lots thereof that said improvements would be installed at the
276 expense of the developers; the County of Dade had constructed a paved highway along the ocean front, running the entire distance from the south line to the north line of the limits of the Town of Miami Shores, which was designated on all of the plats of said subdivision as Collins Avenue, an extension of the avenue by that name traversing the City of Miami Beach from North to South; and it is now stated and averred that under these conditions and under these favorable prospects for the continued growth and development of said area of land described in the information that the citizens, taxpayers and qualified voters of the community lying between the Town of Fulford on the north and the Cities of Miami and Miami Beach on the south, determined upon the

advisability and necessity of establishing a municipality over the territory embraced in the boundaries set out in Relators Exhibit A on the date in 1926 as above set forth.

(f) Respondents further state and aver that at the time of the incorporation of said Town of Miami Shores funds had been procured and the work actually begun towards the erection and construction of a causeway leading from the west side of Biscayne Bay to the east side thereof and crossing the island in said Bay now claimed to be owned by relator, North Island Investment Company, which was to provide a means of travel across the Bay in a similar manner to that which had been provided further south by the erection of three causeways. Large filling and bulkheading developments were also in progress along the western shore of Biscayne Bay and the sections known as Arch Creek and Sunny Isles, and, in fact, the greater portion of said developments had been actually sold various individuals in town lots for residential purposes. In this connection, respondents state and aver that there is not one acre of the land within the limits of the Town of Miami Shores lying east of Biscayne Bay which is suitable for farming purposes or for any other purpose than residential and other town purposes; that although some of said land is not yet fully developed, the larger portion of it is fully developed, and has been developed for nothing except purposes to which town property is usually applied.

(g) At the time of the incorporation of said Town of Miami Shores, there was a great demand for the development and sale of lands, similar to that
277 contained within its boundaries, for residential and other town and city purposes, and land of that character commanded a high price and was in great demand, but respondents now state and aver that subsequent to the organization of said town the values

of lands began to decrease on account of the general deflation of land values in Dade County and other parts of Florida, all of which the Court judicially knows, and a great many of the development projects which had been started were abandoned because of the deflation in prices, and it was not until after what has been called the "boom" had burst that any objection on the part of any land owners in the territory in question began to be heard concerning the incorporation of the Town of Miami Shores; but under the conditions above related, as existing at the time of said incorporation of the town the owners of land lying east of Biscayne Bay cooperated with the property owners in other sections of the town in the election of officials, and were represented on the Town Council by Paul Prigg, Councilman, who was elected at the instance of said property owners east of Biscayne Bay.

(h) The said land of corelators is in no sense remote or isolated from the remainder of the Town of Miami Shores, and is many miles nearer thereto than the City of Miami Beach or the Town of Fulford, or to the City of Miami; and immediately after the Town was organized it was determined, under the then existing conditions, that a system of general improvements for the entire territory, including the land of corelators, was necessary, and a bond issue in the principal sum of $175,000.00, designated as General Improvement Bonds, were authorized by the Town Council and submitted to the vote of the qualified voters of the entire town, in which elections said issue of bonds was carried by a large majority. Said bond issue was voted as a general obligation of the entire town, and all of the territory embraced therein, and was to be paid by general tax upon all the property included within the municipality assessed on a uniform basis, said bonds to run thirty years and to bear 6% interest, payable semi-annually, and were issued for the following specific purposes, which were and are to the benefit of all the

land within the municipality, including that of the corelators; Town Hall police station, jail, fire station, and water pumping plant and lands therefor, $94,000.00; garbage disposal equipment, $11,000.00; street lights and equipment, $35,000.00; fire wells, fire truck and equipment, $30,000.00; mosquito con-
278 trol and equipment, $5,000.00. Respondents state and aver that all of said improvements have been made and carried out as provided under said bond issue, and that the greater portion of said bonds is still outstanding as an obligation on the Town of Miami Shores and all of its territory. It will be observed from said purposes for which the said bonds were issued that no part thereof was used for the building of streets and sidewalks; and respondents state that such streets and sidewalks as have been constructed by the municipality have been so constructed under the front foot assessment plan by which the property owners so benefited are required to pay for such improvements.

(i) The respondents state and aver that as a municipality the Town of Miami Shores has conferred upon the lands of corelators, and in fact, all of the lands lying east of Biscayne Bay, the following benefits;

Franchises have been negotiated and granted to the same public utility corporations which furnish light, water and power to the cities of Miami and Miami Beach and other municipalities within said territory, and furnish to the land of corelators a supply of water and electric light and power;

Similar franchises have been negotiated with a gas company to furnish gas to the lands of corelators, the mains thereof having already been laid the entire distance north and south across the Town of Miami Shores, and within a few hundred feet of the land of corelators, and respondent Town of Miami Shores has

consistently maintained a garbage and refuse collection department which has removed and taken care of all garbage and refuse on any of the premises occupied by parties on the land of corelators, and will maintain such garbage department for corelators;

Respondent Town of Miami Shores has at all times maintained a police department which has given police protection to the property of corelators and others in the territory east of Biscayne Bay, which said police protection has been of great benefit to corelators and the surrounding territory because of unusual conditions existing at what is called Baker's Haulover, a large government cut which extends from the Atlantic Ocean to Biscayne Bay, about the center of the eastern limits of the Town of Miami Shores, and at which point large groups of people of all classes
279 gather to fish and bathe, and where various parties come to sell and peddle to the people so gathered. This police protection has been necessary on acount of bootleggers, gamblers and other violators of the law making or attempting to make headquarters in said vicinity.

The funds which the town procured in the issuance of bonds for the eradication of mosquitoes has been economically used and expended in Biscayne Bay and along the shallow waters thereof near the land of corelators, and has resulted in reducing the damages of this pest almost to a minimum, and still more work of this kind is contemplated by the town in the future.

The facilities of a completely equipped fire department are available to corelators and such buildings as may be constructed on their lands in question.

(j) It is true that very little street and sidewalk work has been done in the territory east of Biscayne Bay in the matter of building streets and sidewalks,

and in the laying of water mains and sewerage, but respondents say that at the time of the incorporation of the town, all of these facilities were either being furnished by the developers of said land or had been promised to the purchasers of lots in their contracts for deed, and in a large portion of the area, particularly in that portion known as Normandy Beach, said facilities had already been provided, and no demand was made or necessary to be made upon the town for such facilities; but in this connection, respondents say that they stand ready, able and willing, at any time that same may be demanded, to furnish and provide such facilities to corelators or any other land owners within its borders. Respondents say that such improvements as may be now on corelators' lands cannot be expected to last always, and it is contemplated that such repairs or re-building of said facilities as may be necessary in the future will be made by respondent Town of Miami Shores.

(k) Respondents further state and show that the property described in the information and alleged to be owned by co-relators, North Island Investment Company and Indian Creek Golf Club, were purchased by the present owners thereof from the said Shoreland Company, about three years after
280 the said Town of Miami Shores was incorporated, and are now undergoing an extravagant process of development by the present owners, with a view of laying out a great portion thereof into a golf course, and subdividing the balance into fine residential estates, all of which need and will derive great benefit and protection from the municipality of Miami Shores, and which said municipality contemplates giving to said territory at such time as the same may be needed after said development is completed; and respondents state that they are unable at this time and until the plans of development of said property are more nearly completed, to inaugurate any scheme of municipal im-

provements in said territory, and all of which will be necessarily be determined by the conditions existing at such future time. Respondents state that a similarly elaborate and highly restricted development has just been outlined and decided upon in that part of the territory lying east of Biscayne Bay and for a mile south of Baker's Haulover, in which the owners and developers thereof have formulated their own plans for the filling and platting of bulkheads and the laying out and construction of streets and sidewalks; and out of deference to the wishes of said property owners, as well as those of corelators, it has been necessary for the respondent Town of Miami Shores to defer the installation of any of such improvements until said plans of development are completed by said owners, at which time respondent Town of Miami Shores stands ready, able and willing to furnish and provide any and all municipal improvements and facilities which may be deemed necessary.

(y) These respondents aver and now plead and rely upon the facts as above set forth, and particularly the fact that corelators North Island Investment Company and Indian Creek Golf Club became the purchasers of their said lands three years after the incorporation of said Town of Miami Shores, as an estoppel from now claiming the right to have said lands cut off and disannexed from said Town of Miami Shores, or the invalidity of the organization of said town. The respondents say that said corelators are guilty of laches in bringing this suit, and are estopped from asserting that their said lands were illegally embraced within the limits of the Town of Miami Shores. Re-
281 spondents say that corelators and other owners of lands lying east of Biscayne Bay have stood by and permitted the town to incur a bonded obligation of $175,000.00 for general municipal improvements, which is to be paid by taxes assessed against all of the lands within the town, including that of corelators, and that they are now estopped to main-

tain this action which would result in releasing lands of corelators from said obligation, and of placing an additional burden on the other lands within said town.

(m) Further answering, respondents say that the corelator, The Normandy Beach Development Company, which said company respondents charge is and has been the chief agitator of this litigation, does not own any land within the boundaries of the Town of Miami Shores, except such land as is suitable for and intended for subdivision into towns and city property; and respondents charge that all lands now owned by it are for sale under its subdivision plan to purchasers under a system of contracts for deed containing restrictions as to size and type of buildings; and said company, on the other hand, obligates itself under said contracts to lay and construct hard surfaced streets and cement sidewalks to each and every lot in said subdivision, and in the course of the development of said subdivision said company has constructed certain streets and sidewalks and has installed electric light and water connections thereto; but respondents aver that notwithstanding the obligations of said contracts the said company is not required to maintain said facilities for any definite time, and it is therefore essential for said property, under said conditions, to be within the boundaries of a municipal corporation, so that in the course of a very short time the purchasers of said property and persons who erect buildings thereon may be assured of some source to which they can look for repairs to and reconstruction of said facilities as they shall depreciate and become obsolete, which the Court judicially knows will result within a short time. Most of the streets which have been constructed in the territory described in the information are not of a permanent nature and will require repairs in a very short time. These same conditions, respondents charge, obtain in all of the various subdivisions embraced within the description of the lands ly-
282 ing east of Biscayne Bay and in controversy in this action.

(n) These respondents therefore emphatically state and aver that none of the land of corelators is of such nature and character or is so situated as to be without the range of municipal benefits as alleged in the information, but that within a short period of time respondent Town of Miami Shores contemplates that it will have large expenditures of street and sidewalk work and water pipe repairs that it will do on the lands of corelators and the other lands east of Biscayne Bay; and that as stated above, although it has done no sewer work within the town, the respondents say that a system of sanitary sewers in the smaller municipalities of Dade County, Florida, is not regarded as scientifically feasible, but that in such communities, such as Coral Gables, Hialeah, Opalocka and Miami Shores, the property owners generally make use of septic tanks instead of sanitary sewers; however, respondents say that due to the present rapid growth of building along the lands between Biscayne Bay and the Atlantic Ocean, particularly in that section in which corelators' lands are situated, it is evident that said section will be completely built up within a short time, and at such time increased police and fire protection and garbage facilities will be required, and respondent Town of Miami Shores contemplates furnishing the same as and when necessary, as well as such other municipal benefits as the demands of the community may warrant.

(o) Respondents say that the lands of corelators are not contiguous but are widely separated from each other, and that a great many lots in what is known as Normandy Beach are not owned by corelator, the Normandy Beach Development Company, but are owned by many parties in various sections of the country so that if this action were maintained for the corelators herein it would result in a haphazard and irregular boundary line for said town, and in disconnecting certain of the remaining portions of said town

from each other, which is prohibited by the laws of the state; and these respondents deny the right of the Attorney General and corelators, aside from the reasons above set out, to maintain this action, either for themselves or on behalf of the other landowners in the territory described in the information, who are not named as corelators.

283 And now having fully answered all and singular the statements and charges contained in said information, and having fully responded to the writ of quo warranto issued herein, and having shown, as therein commanded, the full, perfect and legal right of the respondent Town of Miami Shores and its officers named as correspondents herein, to exercise and enjoy the rights, privileges and franchises conferred by law upon said town and municipality and upon said town and its said officers, these respondents pray to be hence dismissed with their costs and charges justly expended in this behalf.

TOWN OF MIAMI SHORES,
By L. H. HARRINGTON,
Mayor.
W. M. BENNETT,
JOHN A. MAHOOD,
HORACE GOODRICH,
LOUIS NATHAN,
J. V. SHELLHORSE,
JAMES H. BETTLES,
Councilmen.
H. H. HAWTHORNE,
City Clerk, Treasurer and
Tax Assessor.
C. A. MacDONALD,
Tax Collector and Town
Marshal.
BRYANT & PITTMAN,
(Corporate Seal) Attorneys for Respondents.

State of Florida,
County of Dade.

Personally appeared before me, the undersigned authority, a Notary Public duly authorized to take oaths and administer acknowledgments, L. H. Harrington, in the capacity of Mayor of the respondent Town of Miami Shores, and personally in his own behalf, Louise Nathan, H. Goodrich, John A. Mahood, William Bennett, Jack Bettles, John V. Shellhorse, H. H. Hawthorne, C. A. McDonald, and made oath before me that they are familiar with the contents of the foregoing answer and that the facts stated therein are true to the best of their knowledge, information and belief.

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L. H. HARRINGTON,
W. M. BENNETT,
JOHN A. MAHOOD,
HORACE GOODRICH,
LOUIS NATHAN,
J. V. SHELLHORSE,
JAMES H. BETTLES,
H. H. HAWTHORNE,
C. A. MacDONALD.

Sworn to and subscribed before me this 25th day of November, 1929.

R. E. RUSSEY,
(Notary Seal) Notary Public, State of Florida at Large.

My commission expires: Jan. 15, 1933.

Filed Nov. 26, 1929.

E. B. LEATHERMAN,
Clerk Circuit Court.

MOTION FOR JUDGMENT OF OUSTER.

In the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County. Quo Warranto. No. 12239-

State of Florida, ex rel, Fred H. Davis, Attorney General, Relator,

North Island Investment Company, a corporation, Indian Creek Golf Club, a corporation, The Normandy Beach Development Company, a corporation, Lucille F. Ensign, joined by her husband, Walter C. Ensign, Co-relators,

vs.

L. H. Harrington, Louis Nathan, H. Goodrich, John A. Mahood, William Bennett, Jack Bettles, John V. Shellhorse, H. H. Hawthorne, C. A. McDonald, and Town of Miami Shores, a pretended municipal corporation, Respondents.

Comes now the Relator and Co-Relators and move this Honorable Court for the entry of a Judgment of Ouster against the Respondents herein on the following grounds, to-wit:

I. It affirmatively appears from the Answer filed herein that the said Respondent, Town of
285 Miami Shores, a pretended municipal corporation, attempted to incorporate under the General Laws of Florida, recited in Sections 1825 and 1828 inclusive Revised General Statutes of 1920, (Sections 2935 to 2938 Compiled General Laws of Florida, 1927) and it appears affirmatively that said acts are unconstitutional and that said incorporation was and is null and void.

II. That the Answer filed herein is insufficient in that it does not set up any defense to the Information filed herein because said Answer admits that the said pretended town attempted to incorporate under Laws which appear on their face to be unconstitutional, and

which purport to be an invalid delegation from the sovereign lawmaking body of the State to private individuals.

III. It affirmatively appears from the Answer filed herein that the said pretended Town of Miami Shores attempted to include that certain land particularly described in the Information, and which lies east of Biscayne Bay and includes all of that territory east of Biscayne Bay, south of the Town of Fulford, and north of the City of Miami Beach, and that the said attempted inclusion of said land affirmatively appears to be unlawful, unreasonable and invalid exercise of the powers granted by the Legislature.

IV. It affirmatively appears from the Answer and from Exhibits "A" and "B", which said exhibits are admitted by the Answer as being correct and true, that the land described in the Information was not, and is not, a part of the community of persons within the meaning of the statute, and that the attemped incorporation and inclusion of said land was and is an unreasonable, arbitrary, unwarranted, and unlawful exercise of power.

V. It affirmatively appears from the Answer and Exhibits "A" and "B", which are admitted as being correct and true, and admitted as part of the Answer, that only forty-nine (49) electors lived in the entire area sought to be incorporated, and that only thirty-eight (38) of these individuals, residents of an unincorporated hamlet, attempted to include and incorporate, and did include in the incorporation of a pretended municipality, a municipal area of Ten Thousand Two Hundred and Forty (10,240) acres, and that it affirmatively appears from said Answer that said incorporation of such a huge municipal area was and is an unreasonable, unlawful, and invalid exercise of power.

286 Wherefore, the said Relator and Co-Relators move this Honorable Court for the

entry of a Judgment of Ouster against L. H. Harrington, Louis Nathan, H. Goodrich, John A. Mahood, William Bennett, Jack Bettles, John V. Shellhorse, H. H. Hawthorne and C. A. McDonald from exercising or attempting to exercise any of the rights or powers of the pretended municipality of Miami Shores, or that a Judgment of Ouster may be entered against said Town of Miami Shores, a pretended municipal corporation from exercising any rights or powers over that certain land lying east of Biscayne Bay, and particularly described in the Information filed herein.

HENRY K. GIBSON,
MILLER & McKAY,
Attorneys for Relator and
Co-Relators.

(Indorsed on margin of page): Filed Dec. 3, 1929, E. B. Leatherman, Clerk Circuit Court.

ORDER FOR JUDGMENT OF OUSTER.

In the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County. Common Law. No. 12239-D.

State of Florida, ex rel, Fred H. Davis, Attorney General, Relator,

North Island Investment Company, a corporation, Indian Creek Golf Club, a corporation, The Normandy Beach Development Company, a corporation, Lucille F. Ensign, joined by her husband, Walter G. Ensign, Co-relators,

vs.

John A. Mahood, Howard Henshaw, J. J. Thompson, Louis Nathan, John V. Shellhorse, H. Goodrich, Jack Bettles, Wilbur Jones, L. H. Browning, Rubin Bennett, and Town of Miami Shores, a pretended municipal corporation, Respondents.

This matter is before this Court upon the information of Quo Warranto of the relators in the above

styled cause, the answer of the respondents thereto, and the demurrer to said answer, motion for judgment of ouster, and motion to strike the answer of the said relators, and argument of counsel for the re-
287 spective parties having first been had, it appears unto the Court that the municipal corporation known as the town of Miami Shores was self-incorporated, pursuant to Section 2935, C. G. L. of 1927 (et seq.) which provides:

"It shall be lawful for the male inhabitants of any hamlet, village or town in this State, not less than Twenty-five in number, who shall have the qualifications hereinafter prescribed, to establish for themselves a municipal government with corporate powers and privileges as hereinafter provided."

The question before this Court is *not* whether or not the Legislature has rightfully delegated to a municipal corporation legislature authority, but the question before this Court is:

1. Whether or not Section 2935 C. G. L. is constitutional by permitting any hamlet, village or town to *incorporate* themselves, and

2. Whether or not in the event said act is constitutional, said hamlet, village or town has abused the powers granted by said act.

It appears from the record in this case that the area attempted to be incorporated, known as Miami Shores, consists of approximately 10,000 acres, or approximately sixteen square miles. According to Webster's New International Dictionary, a *hamlet* is

"A little cluster of houses in the country; a small group of houses belonging to a parish or village;"

and a *village* is

"A small aggregation of houses in the country, being in general less in number than in a town or city, and more than a hamlet;"

and a *town* is

"Any large collection of houses or buildings, public or private, constituting a distinct place with a name and not incorporated as a city."

It appears from the record in this case that thirty-eight qualified electors favored the incorporation of the said territory as the City of Miami Shores, and that there resided in the said territory forty-nine registered voters. Is it possible that such a vast area containing only forty-nine qualified electors could be considered (1) a hamlet, (2) a village, or (3) a town; and should the Court presume that such a corporation was had by the "male *inhabitants*" as provided by Section 2935, C. G. L. when the record is silent thereto?

288 Even assuming that the act providing for self-incorporation is constitutional, would it not be an unreasonable exercise of power for thirty-eight citizens of the territory constituting of only forty-nine qualified electors, to incorporate an area of approximately sixteen square miles, and is it possible for such an area to be held to be (1) a hamlet, (2) a village, or (3) a town?

In the case of State vs. City of Stuart, 120 So. 335, the Court held that the establishment and extension of municipal boundaries is exclusively legislative, but that

the wrongful exercise of an unlimited power granted to the Legislature was subject to judicial review.

The area, but not the population, compares favorably with other metropolises, to-wit:

	Population	Area
Jacksonville, Florida	140,700	9,824 acres
Tampa, Florida	113,400	16,640 acres
Miami, Florida	156,700	39,680 acres
Nashville, Tennessee	139,600	16,853 acres
Greensboro, N. C.	51,900	10,600 acres
Dallas, Texas	217,800	18,108 acres
Austin, Texas	45,135	10,240 acres

According to World's Almanac 1930.

If section 2935 C. G. L. is constitutional, it requires that the boundaries of the area proposed to be incorporated should approximately coincide with the boundaries of such hamlet, village or town.

The history of Section 2935 C. G. L. is that it originally read according to Section 1, of Chapter 1688 of the Acts of 1869, viz:

"That it shall be lawful for the male inhabitants of any hamlet, village, or town in this State not less than fifty in number, who shall have the qualifications hereinafter prescribed, to establish for themselves a municipal government with corporate powers and privileges, under the terms and provisions of this act."

and was thereafter changed in 1875 to read as now contained in Section 2935 C. G. L. The constitution of 1868, in force in 1875, provided:

"The Legislature shall provide by general law for incorporating such municipal, educational, agricultural,

mechanical, mining, and other useful companies or associations as may be deemed necessary."

Art. 4, Sec. 22, Acts 1868.

289 The Constitution of 1885, now in force in this State, provides that

"All laws now in force not inconsistent with this Constitution shall continue in force until they shall expire by their own limitations, or be repealed by the Legislature." Art. 18, Sec. 2, Acts 1885.
and the Constitution of 1885 further provides that

"The Legislature shall have power to establish, and to abolish, municipalities, to provide for their government, to prescribe their jurisdiction and powers, and to alter or amend the same at any time. When any municipality shall be abolished, provision shall be made for the protection of its creditors." Sec. 8, Art. 8, Constitution of Florida

It appears unto this Court that if the said area contains a hamlet, village or town, that it is self-evident the corporate limits of Miami Shores have not been confined to such hamlet, village or town, and that the exercise of the power, if granted, has been unreasonably exercised by including a much greater area.

It is held in the case of Pursley vs. City of Fort Myers, 100 So. 366, as follows:

"Section 8 of Article 8 of the Constitution, empowering the Legislature to establish and abolish

municipalities, to provide for their government, and to prescribe their jurisdiction and powers, and to alter and amend the same at any time, is an exclusive assignment of power to the Legislature."

It may be that the *de facto* municipal corporation of Miami Shores is indebted by bond issues or otherwise, but there are ample provisions by law and in equity to take care of such matters, and ultimately, if necesary, legislation may be sought to enforce the debts of said town which are by no means discharged by this ruling.

It further appears unto the Court that the law of laches and estoppel is sometimes applied to the State in bringing such proceedings, but on account of the extraordinary circumstances of this cause, the Court is of the opinion that the law of laches or estoppel is not applicable in this case against the State.

It is Therefore Considered, Ordered and Adjudged that a judgment of ouster be entered against the above named respondents.

290 Done and Ordered at Miami, Florida, this 27th day of March, A. D. 1930.

PAUL D. BARNS,
Circuit Judge.

Filed this 27 day of March, A. D. 1930, and recorded in Circuit Court Minutes, No. 48, Page 10.

E. B. LEATHERMAN,
Clerk, Circuit Court,
By M. L. BRADY, Deputy.

JUDGMENT OF OUSTER.

In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. Quo Warranto No. 12239.

State of Florida, et rel, Fred H. Davis, Attorney General, Relator,

North Island Investment Company, a corporation, Indian Creek Golf Club, a corporation, The Normandy Beach Development Company, a corporation, Lucille F. Ensign, joined by her husband Walter C. Ensign, Co-Relators,

vs.

John A. Mahood, Howard Henshaw, J. J. Thompson, Louis Nathan, John V. Shellhorse, H. Goodrich, Jack Bettles, Wilbur Jones, L. H. Browning, Rubin Bennett and Town of Miami Shores, a pretended municipal corporation, Respondents.

This cause coming on to be heard this day upon the information herein, upon the answer of the respondents filed thereto and the demurrer of Relator and Co-Relators, the motion of the Relator and Co-relators to strike, the answer of Respondents in its entirety and upon the motion of the Relator and Co-Relators for a judgment of ouster, and the Court having heard argument of counsel for the respective parties, and being fully advised in the premises, it is

Ordered and Adjudged that the respondents, John A. Mahood, Howard Henshaw, J. J. Thompson, Louis Nathan, John V. Shellhorse, H. Goodrich, Jack Bettles, Wilbur Jones, L. H. Browning and Rubin Bennett be and they are hereby ousted, excluded and prohibited from exercising the offices, franchises and
291 privileges of a municipality or municipal corporation, and of the Mayor, Councilmen, Tax

Collector and Town Marshal thereof under the purported license and charter of the pretended municipality of the Town of Miami Shores.

It is Further Ordered and Adjudged by the Court that the Relator and Co-Relators do have and recover of the respondents all costs in this behalf sustained; Clerks cost $19.95.

Done and Ordered in chambers at Miami, Florida, this 31st day of March, A. D. 1930.

PAUL D. BARNS,
Circuit Judge.

Filed this 31 day of Mar., A. D. 1930, and recorded this 1 day of Apr., A. D. 1930, at 9:00 A. M., in Circuit Court Min. Book 48, on Page 45.

E. B. LEATHERMAN,
Clerk, Circuit Court.
By M. L. BRADY, Deputy.

WRIT OF ERROR.

Book 48, Page 43.

State of Florida. ss.

The State of Florida to the Judge of the Circuit Court of the Eleventh Judicial Circuit of the State of Florida, Greetings:

Because in the record and proceedings and also in the rendition of judgment in a certain cause which is in our said Circuit Court before you, between State of Florida, ex rel, Fred H. Davis, Attorney General, Relator, North Island Investment Company, a corporation, Indian Creek Golf Club, a corporation, The Normandy Beach Development Company, a corporation, Lucille F. Ensign, joined by her husband, Walter

C. Ensign, Co-relators, as plaintiffs, and John A. Mahood, Howard Henshaw, J. J. Thompson, Louis Nathan, John V. Shellhorse, H. Goodrich, Jack Bettles, Wilbur Jones, L. H. Browning, Rubin Bennett, and Town of Miami Shores, a municipal corporation as defendant, manifest error hath happened, as it is said, to the great damage of the said John A. Mahood, Howard Henshaw, J. J. Thompson, Louis Nathan, John V. Shellhorse, H. Goodrich, Jack Bettles, Wilbur Jones, L. H. Browning, Rubin Bennett and Town of Miami Shores, a municipal corporation, as by their complaint appears.

292 We, willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that, if judgment be therein rendered, you distinctly and openly send the record and proceedings aforesaid, with all things touching them, under your seal, together with this Writ, to our Supreme Court of the State of Florida, so that you have the same at Tallahassee on the 2 day of June, A. D. 1930, in our said Supreme Court to be then and there held, that inspecting the record and proceedings aforesaid, our said Supreme Court may cause further to be done therein, to correct that error, what of right and according to law should be done.

Witness the Honorable Glenn Terrell, Chief Justice of the said Supreme Court, and the seal of the said Circuit Court, this 31st day of March in the year of our Lord One Thousand Nine Hundred and Thirty.

E. B. LEATHERMAN,
(Circuit Court Seal) Clerk of the Circuit Court of Dade County,
By F. J. GOULD, Deputy Clerk.

Filed this 31st day of March, A. D. 1930, and recorded in Circuit Court Minutes, No. 48, Page 43.

E. B. LEATHERMAN,
Clerk, Circuit Court,
By M. L. BRADY, Deputy.

MANDATE FROM SUPREME COURT.

The State of Florida,

To the Honorable, the Judge of the Circuit Court for the Eleventh Judicial Circuit of Florida, Greeting:

Whereas, lately in the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for the County of Dade, in a cause wherein State of Florida ex rel. Fred H. Davis, Attorney General was Relator, North Island Investment Company, a Corporation, Indian Creek Golf Club, a corporation, The Normandy Beach Development Company, a corporation, Lucille F. Ensign, joined by her husband, Walter C. Ensign, were Co-Relators, and L. H. Harrington, Louis Nathan, H. Goodrich, John A. Mahood, William Bennett, Jack Bettles, John V. Shellhorse, H. H. Hawthorne, C. A. McDonald, and Town of Miami Shores, a pre-
293 tended municipal corporation were Respondents, the Judgment of said Circuit Court was rendered March 31st, 1930, as by the inspection of the transcript of the record of the said Circuit Court which was brought into the Supreme Court of the State of Florida, by virtue of a writ of error, agreeably to the laws of said State in such case made and provided, fully and at large appears:

And Whereas, at the January Term of said Supreme Court holden at Tallahassee, A. D. 1931, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel; in consideration whereof, on the 24th day of March, A. D. 1931, it was considered by said Supreme Court that the said Judgment of the Circuit Court be and the same is hereby reversed and the cause remanded for further appropriate proceedings; it is further ordered by the Court that the plaintiffs in error do have and recover of and from the defendants in error their costs by them in this behalf expended, which

costs are taxed at the sum of ..... Dollars; therefore,

You are Hereby Commanded, that such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had, the said Judgment of the Circuit Court notwithstanding.

Witness, The Honorable Rivers Buford, Chief Justice of said Supreme Court and the seal of said Court at Tallahassee, this seventh day of May, 1931.

G. T. WHITFIELD,
(Supreme Court Seal) Clerk, Supreme Court of Florida.

Filed this 11 day of May, A. D. 1931, and recorded in Circuit Court Minutes, No. 58, Page 97.

E. B. LEATHERMAN,
Clerk, Circuit Court,
By F. L. DAVIS, Deputy.

294 PETITION FOR LEAVE TO BE ADDED AS CO-RELATOR.

In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. In Chancery Cause No. 12,239-D.

State of Florida, ex rel, Cary D. Landis, Attorney General, et al., Relator and Co-relators,
vs.
John A. Mahood, et al., Respondents.

Tatum's Ocean Park Company, a corporation organized and existing under the laws of the State of Flor-

ida, respectfully represents unto this Honorable Court, as follows:

1. That it is the owner of the following described real estate, situated in Dade County, Florida, to-wit:

Lots 4 and 5, Block 2; Lots 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 13, 14 and 15, Block 3; Lots 1, 2, 5, 6, 7, 8, 10, 11, 12, 14, 15 and 16, Block 4; Lots 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14 and 15, Block 5; Lots 1, 3, 4, 10, 11, 12 and 13, Block 6; Lots 1, 8, 12, 13, 15, 17 and 18, Block 7; Lots 8, 12, 13, 14, 15, 16, 17 and 18, Block 8; Lots 1, 2, 4, 5, 10, 12, 13, 14, 16, 17 and 18, Block 9; Lots 8, 9, 10, 11, 12, 14, 16, 17, 5, Block 10; Lots 1, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17 and 18, Block 11; Lots 1, 2, 4, 5, 6, 8, 10, 11, 14, 18, Block 12; Lots 3, 4, 6, 8, 9, 10, 11, 12, 13, 15, 16 and 18, Block 13; Lots 2, 5, 6, 8, 9, 10, 11, 12, 13, 18, Block 14; Lots 3, 4, 6, 9, 10, 11, 12, 13, 14, 17 and 18, Block 15; Lots 1, 2, 3, 4, 5, 6, 8, 11, 13 and 16, Block 16; Lots 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, Block 17; Lots 1, 2, 4, 8, 9, 10, 11, 14, 16 and 17, Block 18; Lots 2 and 3, Block 19; Lots 1, 3, 4, 6, 7, 8, 9, 10, 11, 14 and 15, Block 20; Lots 2, 4, 5, 8 and 9, Block 21, and Lots 3, 4, 6, 7 and 8, Block 22, all in Altos Del Mar No. 4, according to the plat thereof recorded in Plat Book 10, Page 63 of the Public Records of Dade County, Florida; Lot 10, Block 1; Lot 11, Block 2; Lots 7 and 18, Block 4; Lot 3, Block 5; Lots 14 and 23, Block 6; Lots 1, 2, 14 and 18, Block 8; Lots 2 and 19, Block 9; Lots 2, 4, 13, 14 and 18, Block 10; Lots 11, 12 and 14, Block 11; Lot 24, Block 12; Lots 2, 3 and 13, Block 13; Lots 2, 3, 4, 5 and 6, Block 14; Lots 11, 12 and 14, Block 11; Lot 24, Block 12; Lots 16 and Lots 2, 6 and 7, Block 17, all in Altos Del Mar No. 5, according to the plat thereof recorded in Plat Book 8, Page 92 of the Public Records of Dade County, Fla.;

295 Lot 7, Block 2; Lots 1, 2, 12, 19 and 20, Block 3; Lots 5, 15, 25, 27, 28 and 30, Block 4; Lots 2, 17, 18, 19, 22, 23, 26 and 28, Block 5; Lots 1, 2, 10, 11, 23, 27 and 28, Block 6; Lots 2, 8, 18, 19 and 22, Block 7; Lots 9, 16, 23 and 24, Block 8; Lots 13 and 20, Block 9; Lots 16 and 18, Block 10; Lots 4, 8, and 11, Block 13; Lots 3, 4, 5, 6, 7, 8, 9 and 12, Block 14, all in Altos Del Mar No. 6, according to the plat thereof recorded in Plat Book 8, Page 106 of the Public Records of Dade County, Fla.

Lots "C", "D", "E", "F", "G", "H", "I", "J", "M", "N", "O", "P", "Q", "R", "S" and "T", all in Altos Del Mar No. 4, according to the plat thereof recorded in Plat Book 10, Page 63 of the Public Records of Dade County, Fla.;

Lots 4 and 26 of Tatum's Ocean Beach Park, according to the plat thereof recorded in Plat Book 5, page 35, in the office of the Clerk of the Circuit Court in and for Dade County, Florida.

A strip of land 250 feet in width, extending from Biscayne Bay to the Atlantic Ocean, lying between the south line of the above described Lot 4 of Tatum's Ocean Beach Park, and the north line of the land of the Baker's Haulover Commission, Dade County, Florida.

that said lands lie within the purported boundaries of the pretended Town of Miami Shores, sometimes also known as Town of North Miami, that its lands lie entirely East of Biscayne Bay and your petitioner adopts each, all and every of the allegations of the Information filed herein and prays to be added as a co-relator to this cause, and to have the same benefit of such judgment as may be entered in this cause, as

though it had been originally named herein as co-relator.

FORREST SULLIVAN,
HENRY K. GIBSON,
Attorneys for Petitioner,
Tatum's Ocean Park Company.

State of Florida,
County of Dade. ss.

This day personally appeared before me, the undersigned authority, S. M. Tatum, who being by me first duly sworn, deposes and says: that he is President of Tatum's Ocean Park Company, a Florida corporation, and is by it duly authorized to make this affidavit in its behalf; that he has read the above and foregoing petition and that the statements therein contained are true.

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S. M. TATUM.

Subscribed and sworn to before me this 17th day of December, A. D. 1931.

J. W. COLLINS,
(Seal) Notary Public, State of Florida at Large.

My commission expires Nov. 11, 1933.

Filed Dec. 17, 1931.

E. B. LEATHERMAN,
Clerk, Circuit Court.

ORDER.

In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. In Chancery Cause No. 12239-D.

State of Florida, ex rel, Cary D. Landis, Attorney General et al., Relator and Co-Relators,

vs.

John A. Mahood, et al., Respondents.

This cause coming on to be heard upon petition of Tatum's Ocean Park Company, a Florida corporation, for leave to be added as Co-Relator herein, and the Court being advised in the premises:

It is Therefore Ordered, Adjudged and Decreed that the said petitioner be, and it is hereby added as Co-Relator herein and in the Information filed herein with the same force and effect as though it had been originally named herein as Co-Relator.

Done and Ordered in Open Court at Miami, Dade County, Florida, this 17th day of December, A. D. 1931.

A. V. LONG, Judge.

Filed this 17 day of Dec., A. D. 1931, and recorded in Circuit Court Minutes, No. 62, Page 333.

E. B. LEATHERMAN,
Clerk, Circuit Court,
By F. L. DAVIS, Deputy.

297 SUGGESTION FOR CHANGE IN PARTIES.

In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. In Chancery Cause No. 12239-D.

State of Florida, ex rel., Fred H. Davis, Attorney General, et al., Relator and Co-Relators,
v.
John A. Mahood, et al., Respondents.

State of Florida,
County of Dade, ss.

This day personally appeared before me, the undersigned authority, James A. Dixon, who being by me first duly sworn, deposes and says: That he is one of the attorneys of record for Indian Creek Holding Company, a Florida corporation, and is by it duly authorized to make this affidavit on its behalf; that since the institution of this suit, Indian Creek Holding Company, a Florida corporation, has acquired the interest and title of the co-relators North Island Investment Company, a Florida corporation, and Indian Creek Golf Club, a Florida corporation not for profit, to the lands of said co-relators described in the information; that the said Indian Creek Holding Company is now the owner in fee simple of the following described lands, situated in Dade County, Florida, to-wit:

Government Lots One (1) and Four (4) Section 34; Northeast Quarter of the Northeast Quarter of Section 34; Government Lot Two (2) in Section 35; Government Lot Two (2) in Section 34; Government Lot Four (4) in Section 26; and Government Lots One (1) and Two (2) and the Southeast Quarter of Section 27; all in Township 52 South, Range 42 East;

that all of said lands lie within the purported boundaries of the pretended Town of Miami Shores and wholly East of the center line of Biscayne Bay, in Dade County, Florida.

JAMES A. DIXON.

Subscribed and sworn to before me this 16 day of December, A. D. 1931.

ANNE WENTLAND TURNER,
Notary Public State of Florida at large. My commission expires 3-29-33.

298

(N. P. Seal)

Filed Dec. 17, 1931.

E. B. LEATHERMAN,
Clerk, Circuit Court,

ORDER ON CHANGE OF PARTIES.

In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. In Chancery Cause No. 12239-D.

State of Florida, ex rel., Fred H. Davis, Attorney General, et al., Relator and Co-Relators,

v.

John A. Mahood, et al., Respondents.

This cause coming on to be heard upon the suggestion that the Indian Creek Holding Company, a Florida corporation, has, since the institution of this suit, acquired the interest and title of two of the co-relators herein, to-wit: North Island Investment Company, a Florida corporation, and Indian Creek Golf Club, a Florida corporation not for profit, and that said Indian Creek Holding Company, a Florida cor-

poration, is now the owner of the fee simple title to the following described lands situated in Dade County, Florida, to-wit:

Government Lots One (1) and Four (4) Section 34; Northeast Quarter of the Northeast Quarter of Section 34; Government Lot Two (2) in Section 35; Government Lot Two (2) in Section 34; Government Lot Four (4) in Section 26; and Government Lots One (1) and Two (2) and the Southeast Quarter of Section 27; all in Township 52 South, Range 42 East;

and it appearing to the Court that said lands lie wholly east of the center of Biscayne Bay and within the purported boundaries of the Town of Miami Shores, or Town of North Miami; and the Court being advised in the premises;

It Is Therefore Ordered, Adjudged And Decreed that said Indian Creek Holding Company, a Florida corporation, be and it is hereby substituted as a
299 co-relator in this cause in the place and stead of North Island Investment Company and Indian Creek Golf Club.

Done And Ordered in Open Court, at Miami, Dade County, Florida, this 17 day of December, A. D. 1931.

A. V. LONG, Judge.

Filed this 17 day of Dec. A. D. 1931, and recorded in Circuit Court Minutes, No. 62, Page 330.

E. B. LEATHERMAN,
Clerk, Circuit Court,
By F. L. DAVIS, Deputy.

SUGGESTION OF CHANGE OF PARTIES.

In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. In Chancery Cause No. 12239-D.

State of Florida, ex rel., Fred H. Davis, Attorney General, et al., Relator and Co-Relators,

v.

John A. Mahood, et al., Respondents.

State of Florida,
County of Dade, ss.

This day personally appeared before me, the undersigned authority, James A. Dixon, who being by me first duly sworn, deposes and says: That he is one of the attorneys of record in the above styled cause, for the relator and co-relators; that subsequent to the institution of this suit, and subsequent to the suing out of the Writ of Error in this cause, the Honorable Fred H. Davis, named herein as relator, in his capacity as Attorney General, ceased to be Attorney General, and has been succeeded in said office in the State of Florida, by the Honorable Cary D. Landis, who is now the duly qualified and acting Attorney General.

Wherefore, affiant suggests that the Honorable Cary D. Landis as Attorney General of the State of Florida should be substituted as Relator in this cause in the place and stead of the Honorable Fred H. Davis, formerly Attorney General of the State of Florida.

JAMES A. DIXON.

300 Subscribed and sworn to before me this 16 day of December, A. D. 1931.

ANNE WENTLAND TURNER,
(N. P. Seal) Notary Public State of Florida at large. My commission expires 3-29-35.

Filed Dec. 17, 1931.

E. B. LEATHERMAN,
Clerk, Circuit Court.

ORDER ON SUGGESTION FOR CHANGE OF PARTIES.

In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. In Chancery Cause No. 12239-D.

State of Florida, ex rel., Fred H. Davis, Attorney General, et al., Relator and Co-Relators,

v.

John A. Mahood, et al., Respondents.

It appearing to the Court from the affidavit and suggestion for change of parties, plaintiff, filed in this cause, that subsequent to the institution of this suit and subsequent to the suing out of the Writ of Error herein, that the Honorable Fred H. Davis, formerly Attorney General of the State of Florida had ceased to be such Attorney General and had been succeeded in said office by the Honorable Cary D. Landis, and that the said Honorable Cary D. Landis is now the duly qualified and acting Attorney General of the State of Florida;

It Is Therefore Ordered, Adjudged And Decreed that the said Honorable Cary D. Landis, as Attorney General of the State of Florida, be and he is hereby substituted as Relator herein in the place and stead of the Honorable Fred H. Davis, formerly Attorney General of the State of Florida.

Done And Ordered in Open Court, at Miami, Dade County Florida, this 17 day of December, A. D. 1931.

A. V. LONG,
Judge.

301 Filed this 17 day of Dec. A. D. 1931, and recorded in Circuit Court Minutes, No. 62, Page 334.

E. B. LEATHERMAN,
Clerk, Circuit Court,
By F. L. DAVIS, Deputy.

PETITION FOR LEAVE TO BE ADDED AS CO-RELATOR.

In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. In Chancery Cause No. 12239-D.

State of Florida, ex rel Cary D. Landis, Attorney General, et al., Relator and Co-Relators,
v.
John A. Mahood, et al., Respondents.

Surf Hotel Corporation, a corporation organized and existing under the laws of the State of Florida, respectfully represents unto this Honorable Court, as follows:

1. That it is the owner of the following described real estate, situated in Dade County, Florida, to-wit:

Lots One (1) to Nine (9) Inclusive, Block One (1);

Lots One (1) and Two (2) of Block Two (2) and Tracts "A", "B" and "U" all situated in Altos Del Mar No. 4, according to the plat thereof recorded in Plat Book 10, page 62 of the Public Records of Dade County, Florida.

that said lands lie within the purported boundaries of the pretended town of Miami Shores, sometimes also known as Town of North Miami; that its lands lie en-

tirely East of Biscayne Bay and your Petitioner adopts each, all and every of the allegations of the Information filed herein and prays to be added as a co-relator to this cause, and to have the same benefit of such judgment as may be entered in this cause, as though it had been originally named herein as co-relator.

MILLER, McKAY, DIXON
& DeJARNETTE,
Attorneys for Petitioner
Surf Hotel Corporation.

302 State of Florida,
County of Dade, ss.

This day personally appeared before me the undersigned authority, Alfred I. Barton, who being by me first duly sworn, deposes and says: That he is Secretary of Surf Hotel Corporation, a Florida corporation, and is by it duly authorized to make this Affidavit in its behalf; that he has read the above and foregoing petition and that the statements therein contained are true.

ALFRED I. BARTON.

Subscribed and sworn to before me this 16 day of December, A. D. 1931.

(Seal)

ANNE WENTLAND TURNER,
Notary Public State of Florida
at large. My commission expires: 3-29-33.

Filed Dec. 17, 1931.

E. B. LEATHERMAN,
Clerk, Circuit Court.

ORDER.

In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. In Chancery Cause No. 12239-D.

State of Florida, ex rel., Fred H. Davis, Attorney General, et al., Relator and Co-Relators,

v.

John A. Mahood, et al., Respondents.

This cause coming on to be heard this day upon the Petition of Surf Hotel Corporation, a Florida corporation, for leave to be added as Co-Relator herein, and the Court being advised in the premises,

It Is Therefore Ordered, Adjudged And Decreed that the said petitioner, Surf Hotel Corporation, a Florida corporation be, and it is hereby added as a Co-Relator herein, with the same force and effect as though it had been named as a Co-Relator herein, and the information filed herein on the 31st day of July, A. D. 1929.

Done And Ordered in Open Court, at Miami, Dade County, Florida, this 17 day of December, A. D. 1931.

A. V. LONG,
Judge.

303 Filed this 17 day of Dec. A. D. 1931, and recorded in Circuit Court Minutes, No. 62, Page 332.

E. B. LEATHERMAN,
Clerk Circuit Court,
By F. L. DAVIS, Deputy.

VERDICT.

In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. In Chancery Cause No. 12239-D.

State of Florida, ex rel Cary D. Landis, Attorney General, et al., Relator and Co-Relators,

v.

John A. Mahood, et al., Respondents.

We, the Jury, find in favor of the Relator and Co-Relators and against the Respondents.

So say we all.

Dated at Miami, Dade County, Florida, this 17 day of December, A. D. 1931.

FRED W. WIELAND,
Foreman.

Filed this 17 day of Dec. A. D. 1931, and recorded in Circuit Court Minutes, No. ..... Page .....

E. B. LEATHERMAN,
Clerk Circuit Court,
By ..... Deputy.

PROPOSED EXHIBIT "C" FOR SURF HOTEL CORP.: CREEK REALTY CO.: AND NORTH ISLAND INVESTMENT CO., AND REMAINING INTERVENERS.

304 T. J. Dowdell, Commissioner. Aug. 15, '32.

In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. In Chancery Cause No. 12239-D.

State of Florida, ex rel Cary D. Landis, Attorney General, et al., Relator and Co-Relators,
v.
John A. Mahood, et al., Respondents.

Judgment of Ouster.

This cause coming on for trial before the Honorable A. V. Long, Judge Pro Haec Vice of the above styled Court, and Fred W. Wieland, Foreman of the Jury and five other good and lawful men of the County of Dade and State of Florida, being duly sworn according to law, and, after having heard the testimony and evidence produced before them, and the Court having, upon motion of the attorneys for the Relator and Co-Relators, directed a verdict in favor of the Relator and Co-Relators at the conclusion of all the evidence, and the Jury having returned in open Court, the following verdict, in accordance with the direction of the Court:

"We, the Jury, find in favor of the Relator and Co-Relators and against the Respondents.

"So say we all.

"Dated at Miami, Dade County, Florida, this 17th day of December, A. D. 1931.

FRED W. WIELAND,
Foreman."

It Is Therefore Considered, Ordered And Adjudged by the Court that the Respondents Louis Nathan, as Mayor, Howard Henshaw, D. D. Avil, John V. Shellhorse, F. D. Snow, Wilbur Jones, G. A. Raymond and W. E. Graves, as councilmen, and John A. Mahood, as Clerk, and L. H. Browning, as Tax Collector, and Reuben Bennett, as Marshal, of the Town of North Miami, (Formerly known as Town of Miami
305 Shores) and the Town of North Miami (formerly known as Town of Miami Shores), be, and they each are hereby ousted, excluded and prohibited from exercising the offices, franchises and privileges of a municipality or municipal corporation, and of the Mayor, Councilmen, Tax Collector, Clerk and Town Marshal thereof, under the purported license, incorporation and/or charter of the Town of North Miami, (formerly known as Town of Miami Shores) over or upon the following described lands, or any part thereof, to-wit:

Commencing for a point of beginning at the intersection of the high water mark of the Atlantic Ocean with the south boundary line of fractional Section 35 in Township 52 South, Range 42 East, Dade County, Florida, run west along the south boundary of Section 35 and continue along the south line of Sections 33 and 34 to the intersection of the east boundary of the City of Miami; thence north northeasterly along the said eastern limits of the City of Miami, produced a distance of 2750 feet; thence in a northeasterly direction to the northeast corner of fractional Section 27, Township 52 South, Range 42 East; thence continue in a northeasterly direction delecting to the left from the last mentioned course to the northeast corner of the southwest one-quarter (SW¼) of the southwest quarter (SW¼) of fractional section 23-52-42; thence north along the east line of the west one-half (W½) of the west one-half (W½) of fractional Section 23-52-42 the north boundary of said Section 23; thence east along the

said north boundary line of said Section 23 to the intersection of the high water mark of Atlantic Ocean; thence continue east along the last mentioned course produced a distance of 1500 feet; thence in a southerly direction parallel to and 1500 feet east of the high water meander line of the Atlantic Ocean to the south line of fractional Section 35, Township 52 South, Range 42 East, produced easterly; thence west along the last said south line of Section 35 to the point of beginning.

It Is Further Ordered And Adjudged by the Court that the lands above described which constitute all that portion of the purported Town of Miami Shores east of Bay Biscayne, and between said Bay Biscayne and the Atlantic Ocean, are not, and never were legally incorporated in the said Town of Miami
306 Shores, now known as Town of North Miami, and that said lands were never a part of said purported Town and that their attempted inclusion therein was illegal, null and void and without warrant or authority of law.

It Is Further Ordered And Adjudged that the Relator and Co-Relators herein do have and recover of the Respondents all costs in this behalf sustained.

Done And Ordered in open Court at Miami, Dade County, Florida this 18th day of December, A. D. 1931.

A. V. LONG,
Circuit Judge Pro Haec Vice.

Filed this 18 day of Dec. A. D. 1931, and recorded in Circuit Court Minutes No. 62, Page 343.

E. B. LEATHERMAN,
Clerk Circuit Court,
By W. C. McGLOTHLIN, Deputy.

MOTION FOR NEW TRIAL.

In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. Common Law No. 12239.

State of Florida, ex rel Cary Landis, Attorney General, et al.,
v.
John A. Mahood, et al., Respondents.

Come now the Respondents, by and through their undersigned Solicitors, and move the Court for a new trial in this case, and for grounds of said motion, assign the following:.

1.

The Court was in error in sustaining the motion of Relators to direct a verdict in favor of Relators and against the Respondents in this case.

2.

The Court was in error in directing the jury to return a verdict in favor of the Relators and against the Respondents in this case.

307

3.

There is no competent evidence in the record to support the verdict of the jury in this case.

4.

The Court erred in excluding from the jury the evidence proffered by the Respondents by witnesses, W. P. Brion and D. F. Baker, in open Court by counsel for

Respondents, that the settlements and subdivisions inhabitated by various numbers of people, known as Biscayne Park, Irons Manor, Fulford Highlands, Sunkist Groves, Arch Creek, Altos Del Mar Nos. 1, 2 and 3, Normandy Beach, and the owners of the Miami Shores Island, all came together with one purpose to establish a municipality embracing all of said settlements and subdivisions, together with the land intervening between them, as well as the lands under the waters of Biscayne Bay, and to establish continuous boundaries enclosing all of said areas into a contiguous body of land, and that said boundaries were so connected in the organization of said town, and that a causeway or bridge was under construction across the waters of the bay to connect the mainland of Miami Shores Island and on to the land East of the Bay.

5.

The Court erred in refusing and denying the proffer of Respondents to prove by John A. Mahood, L. H. Browning and Reuben Bennett that the owners of at least three-fourths of the land lying East of the Bay and within the original boundaries of the Town of Miami Shores, to-wit: Tatum Brothers and the owners of the entire island in the bay, to-wit: The Shoreland Company, actively fostered and brought about the incorporation of the Town to embrace such territories, and that their successors in title to portions of said land took the same with full knowledge that the same was within the original town limits of the Town of Miami Shores, and that the property owners and inhabitants of the territory East of the Bay since the incorporation of the town have requested and received municipal benefits in the way of fire protection, police protection, garbage collections, mosquito control, and that such property owners and inhabitants, since the town's incorporation, have applied for and

procured from the town authorities building permits for the construction of buildings and other improvements within said territory, and by said acts recognized and acquiesced in the validity of said boundaries.

308 6.

The Court erred in refusing and denying the proffer of Respondents, through their attorneys, to prove by L. H. Browning, Tax Collector, and John A. Mahood, Town Clerk and Treasurer, that within a short time and prior to the bringing of this suit the Town incurred certain indebtedness by the issuance and sale of bonds in the approximate sum of Two Hundred and Seventy-five Thousand ($275,000.00) Dollars, and the proceeds of said bonds used for various Municipal Purposes, That Said Bonds Were Authorized And favorably approved at an election called and held by the Town of Miami Shores before their issuance by a majority vote of the inhabitants of said town, that said bonds were regularly and legally validated and confirmed by a decree of this Court before their sale and delivery, and that partically all of said bonds are now owned and held by various and sundry people.

7.

The Court erred in holding and adjudging that the only issue for the jury to determine in this case was whether or not the property along East of the Bay and the island within the bay were a part of the community, hamlet or village existing West of the Bay.

8.

The weight of the evidence in this case preponderates in favor of the Respondents and against the Relators.

9.

The law and the evidence in this case are against the verdict of the jury.

.....

Attorneys for Respondents.

Filed Dec. 18, 1931.

E. B. LEATHERMAN,
Clerk Circuit Court.

309 ORDER OVERRULING MOTION FOR NEW TRIAL.

In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, Common Law. No. 12239.

State of Florida, ex rel Cary Landis, Attorney General, et al., Relators,

vs.

John A. Mahood, et al., Respondents.

This cause was heard on the motion for new trial filed herein by the Respondents, said motion being heard and understood by the Court and after argument of counsel; it is

Considered, Ordered And Adjudged that said motion for new trial, is hereby overruled and denied, to all of which order of the Court Respondents except. 60 days allowed to prepare and present bill of exceptions.

Done And Ordered in Chambers at Miami, Florida, this 18th day of December, A. D. 1931.

A. V. LONG,
Judge, Pro Haec Vice.

Filed this 18 day of Dec: A. D. 1931, and recorded in Circuit Court Minutes, No. 62, Page 336.

E. B. LEATHERMAN,
Clerk Circuit Court,
By F. L. DAVIS, Deputy.

THIS CERTIFICATE END OF: PROPOSED EXHIBIT "A" FOR INTERVENERS.

T. J. Dowdell, Com'r. 8-15-'32.

END OF INTERVENER'S EX. "E".

T. J. D. Com'r.

State of Florida,
County of Dade, ss.

I, E. B. Leatherman, Clerk of the Circuit Court, in and for Dade County, Florida, Do Hereby Certify that the above and foregoing pages numbered from 1 to 68, inclusive, contain a true and correct copy of certain papers filed in the case of State of Florida, ex rel, Fred H. Davis, Attorney General, Relator, North Island Investment Company, a corporation, et als., Co-Relators, vs. L. H. Harrington, et als., Respondents, which papers are listed as follows:

310

Information filed July 31, 1929.

Writ of Quo Warranto filed Aug. 13, 1929.

Answer of Respondents filed Nov. 26, 1929.

Motion for Judgment of Ouster, filed Dec. 3, 1929.

Order for Judgment of Ouster filed Mar. 27, 1930.

Writ of Error filed Mar. 31, 1930.

Judgment of Ouster filed Mar. 31, 1930.

Mandate filed May 11, 1931.

Petition for leave to be Added as Co-relator, filed Dec. 17, 1931.

Order filed Dec. 17, 1931.

Suggestion for Change in Parties filed Dec. 17, 1931.

Order on Change of Parties filed Dec. 17, 1931.

Suggestion of Change of Parties Dec. 17, 1931.

Order on Suggestion for change of Parties filed Dec. 17, 1931.

Petition for Leave to be added as Co-Relator filed Dec. 17, 1931.

Order on Petition for Leave to add Surf Hotel Corporation as Co-relator, filed Dec. 17, 1931.

Verdict, filed Dec. 17, 1931.

Judgment of Ouster, filed Dec. 18, 1931.

Moton for New Trial filed Dec. 18, 1931.

Order Overruling Motion for New Trial, filed Dec. 18, 1931.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 24th day of December, A. D. 1931.

E. B. LEATHERMAN,
(Circuit Court Seal) Clerk Circuit Court.
By B. S. PEELER, D. C.

PROPOSED EX. "D" FOR INTERVENER D. RICHARD MEAD, AS TRUSTEE, AND ALL REMAINING INTERVENERS.

311 T. J. Dowdell, Commissioner. 8-15-'32.

In the Supreme Court of Florida, June Term A. D. 1932.

Wednesday, August 10, 1932.

John A. Mahood, et al, Plaintiffs-in-error,
vs.
The State of Florida, ex rel, Cary D. Landis, Attorney General, et al, Defendants-in-error.

A Writ of Error to the Circuit Court for Dade County.

This cause coming on to be heard upon motion of counsel for Defendants in Error to dismiss the writ of error herein and same having been duly considered it is ordered by the Court that said motion be granted and that the writ of error issued in this cause on the 4th day of March A. D. 1932 be and the same is hereby dismissed at the cost of the Plaintiffs in Error.

A true copy.

Test:

G. T. WHITFIELD,
Clerk Supreme Court of Florida.

INTERVENER'S EX. "F".

T. J. Dowdell, Commissioner.

In the Circuit Court of the Eleventh Judicial Circuit of Florida, for Dade County. No. .....

Tatum's Ocean Park Company, a corporation under the laws of Florida, Petitioner,

vs.

The Town of Miami Shores, a municipal corporation under the laws of Florida, Defendant.

To the Mayor of the Town of Miami Shores, a Municipal Corporation under the Laws of Florida:

You are hereby notified that Tatum's
312 Ocean Park Company a corporation under the laws of Florida, has filed a petition in the above styled cause and in the aforesaid Court making application to the Court to exclude from the territorial limits of the Town of Miami Shores, a municipal corporation under the laws of Florida, the lands of the aforesaid petitioner described in the said petition, and that the aforesaid Court has appointed two o'clock P. M., January 12th, 1928, as a time for the hearing of said application.

You are, therefore, notified to show cause at said time before the aforesaid Court in its offices in the Venetian Arcade Building in Miami, Florida, why the prayer of said petition should not be granted and said lands excluded from the corporate limits and jurisdiction of the said Town of Miami Shores.

TATUM'S OCEAN PARK COMPANY,
By McCASKILL & McCASKILL,
Its Attorneys.

Sheriff's Office Jan. 7, 11:21 AM 1928, Dade County, Florida.

(Indorsed on back of the foregoing instrument is the following):

Received This notice this 7th day of January, 1927, and served the same together with a true copy of an

order of Court made in the aforesaid cause dated January 4th, 1928, ordering that notice of the application of said petitioner be served upon the Mayor of said Town, notifying him that on January 12th, 1928, at two o'clock P. M., to show cause why the prayer of said petition should not be granted, on January 10th, 1928, by delivering a true copy of this notice and a true copy of said order of Court to W. P. Brion as Mayor of the Town of Miami Shores.

HENRY R. CHASE,
Sheriff of Dade County,
Florida.
By A. W. FREEDLUND,
Deputy Sheriff.

Service	$1.00
Copy and ret.	.50
18 miles	2.25
W	3.75

NOTICE TO SHOW CAUSE.

313 Filed Jan. 12, 1928.

No. 21971-A.

307.

Tatum's Ocean Park Co., Complainant,
vs.
The Town of Miami Shores.

E. B. Leatherman, Clerk Circuit Court, McCaskill & McCaskill.

State of Florida,
County of Dade, ss.

I, E. B. Leatherman, Clerk of the Circuit Court, in and for Dade County, Florida, Do Hereby Certify

that the above and foregoing is a true and correct copy of a notice to Show Cause, together with the Sheriff's return, filed on Jan. 12, 1928 in the case of Tatum's Ocean Park Co., Complainant against The Town of Miami Shores, Defendant, Case No. 21971-A, according to the files of this office.

I Further Certify that the above entitled suit was filed in this Office on January 3, 1928.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 19th day of September A. D. 1932.

E. B. LEATHERMAN,
(Circuit Court Seal) Clerk Circuit Court
By J. M. COWART, D. C.

INTERVENER'S EX. "F".

T. J. Dowdell, Commissioner.

The State of Florida.

To all and Singular the Sheriffs of the State of Florida:

To: John A. Mahood, Tax Collector of the Town of Miami Shores, Greetings:

You are hereby required to appear before the Circuit Court for the Eleventh Judicial Circuit of
314 Florida, County of Dade, on the 5th day of December, 1927, at the Court House of said County: to answer a bill of complaint filed against you in said Court by The Normandy Beach Development Company, a corp.

Bill for Injunction and other relief.

and then and there to receive and abide by such judgment and decree as said Court shall have considered in this behalf.

And this you are not to omit; upon pain of judgment by default being against you.

Witness the Honorable H. F. Atkinson, A. J. Rose and Paul D. Barnes, W. L. Freeland, Judges of said Court, and the seal of this Court at the City of Miami, Florida this 3rd day of November, 1927.

E. B. LEATHERMAN,
(Circuit Court Seal) Clerk.
By H. H. JOHNSON,
Deputy Clerk.

Dk. 55 No. 248.

Original.

No. 21332.

In Circuit Court Eleventh Judicial Circuit Court of Florida, County of Dade. In Chancery.

The Normandy Beach Development Company, a corporation,
versus
John A. Mahood, as Tax Collector of the Town of Miami Shores.

To first Monday in December, 1927.

Clark & Clark, Complainant's Solicitor.

Filed Nov. 10, 1927, E. B. Leatherman, Clerk Circuit Court.

Morgan—No. 248.

Normandy Beach Dev.
vs.
John A. Mahood.

Original Return.

315 Received this In Chan. on the 7th day of Nov.

Received this summons on Nov. 7, 1927, and served same in Dade County, Fla. on Nov. 7, 1927, by de-

livering a true copy thereof to the within named defendant, John A. Mahood, as Tax Collector of the Town of Miami Shores, and by then and there showing to him this original and explaining the contents thereof.

Service $4.00.
EVR.

State of Florida,
County of Dade, ss.

I, E. B. Leatherman, Clerk of the Circuit Court, in and for Dade County, Florida, Do Hereby Certify that the above and foregoing is a true and correct copy of a Summons issued November 3, 1927, to John A. Mahood, Tax Collector of the Town of Miami Shores, and filed in this office on November 10, 1927 in the suit of Normandy Beach Development Company against Mahood, Chancery No. 21332.

I Further Certify that the above entitled suit was filed in this office on November 3, 1927.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 15th day of September, A. D. 1932.

E. B. LEATHERMAN,
(Circuit Court Seal) Clerk Circuit Court,
By J. M. COWART, D. C.

316 On the 17th day of October, A. D. 1935, Master's Report was filed, in the words and figures following, to-wit:

MASTER'S REPORT.

In the United States District Court, in and for the Southern District of Florida.

The Brown-Crummer Investment Company, a corporation organized and existing under and by virtue of the laws of the State of Kansas, Plaintiff,
vs. No. 1248 M. Eq.
Town of North Mami, et al., Defendants.

Based upon the pleadings and all of the testimony introduced as aforesaid, as directed in the Order of Reference, I, as Master, now make the following findings of fact:

1. That Complainant is a citizen of the State of Kansas; that the amount in controversy exceeds the sum of $3,000 exclusive of interest and costs; and that this Court has jurisdiction over the parties and the subject matter.

2. That the Town of Miami Shores, under the provisions of Sections 1825 to 1828, inclusive, of the Revised General Statutes of Florida (1920) was organized as a municipal corporation in the year 1926; that by subsequent Act of the Legislature of Florida, in the year 1931, the name of this municipality was changed to Town of North Miami. That subsequent to its organization in the year 1926 said Town exercised all of the functions and powers granted to it by virtue of the Statutory Laws of Florida quoted above both in the territory East of the Bay Biscayne as well as in the territory West of Bay Biscayne. That the exercise of

said municipal functions included policing the territory on both sides of the Bay, as well as the collection of garbage, mosquito eradication work, street repair work, and enforcement of building restrictions through the issuance of building permits to residents living in territory east as well as west of Bay Biscayne.

3. I further find that Complainant as the owner and holder of past due municipal bonds and coupons, secured a final judgment against the Town
317 of North Miami in case numbered 1571 on the law side of this Court; that said judgment was rendered on June 19th, A. D. 1931 in the sum of $11,790.00 plus costs of $12.50 and that said judgment is duly recorded in Judgment Book No. 1 at page 495; that the time for appeal from this judgment has expired and that no part thereof has ever been paid. I further find that the allegation to the effect that Complainant is also the owner and holder of many other bonds and coupons, which have matured since the maturity of those bonds and coupons included in the judgment mentioned above, all of which are now past due and unpaid, is, as a matter of fact, admitted in the answers of the defendants Town of North Miami; Ocean Beach Heights, Inc., and The Normandy Beach Development Company. I further find, from the evidence, that said Town of North Miami has no property subject to execution and no means of raising funds to pay the judgment heretofore procured by complainant other than by the exercise of its power of taxation in conformity with Section 1903 of the Revised General Statutes of Florida (1920).

4. I further find that by the terms of said bonds and under the Statute authorizing the issuance of same, said Town of Miami Shores, now known as North Miami, pledged its full faith and credit for the payment of said bonds and further pledged itself to levy a tax upon all the taxable property in said Town

for the payment of these bonds; that the sole security for the payment of said bonds was the power vested in said Town to levy such taxes upon all taxable property included within the Town limits at the time the bonds in controversy were issued and validated.

5. I further find that the proceeds from the sale of the aforesaid bonds were expended by the Town in the construction of public improvements, which are exempt from levy and sale, and that a portion of the proceeds from the sale of these bonds were expended within the boundaries of the property lying east of the Bay which is particularly described in Paragraph 8 of the bill of complaint and which said lands include properties now owned by all of the individual defendants herein; that these lands east of Bay Biscayne were originally included within the corporate limits of said Town of Miami Shores, now North Miami, when the bonds herein described were issued; that from the proceeds of the sale of said bonds the Town spent the sum of $6,000 for mosquito eradication work in the territory east of the Bay.

318 6. As to the allegations of paragraph 7 of the bill, it is admitted that when the Town of North Miami was organized none of the defendants herein made any objection to the inclusion of their respective properties within the limits of said Town, nor did any of them institute legal proceedings to have their respective properties excluded from the limits of the Town until the 12th day of August, 1929 when quo warranto proceedings were filed in the Circuit Court, in and for Dade County, Florida. It is further admitted that, after these bonds had been authorized, a validation suit was filed in said Circuit Court of Dade County which resulted in a final decree of validation, to which none of these defendants interposed any objection nor did any of them file any proceedings seeking to restrain the issuance of said bonds or attacking

their validity. It is also admitted that no appeal was ever taken from the decree of validation nor was any objection made to the spending of the proceeds derived from the sale for the construction of public improvements within said Town.

7. Concerning the allegations of paragraph 8 of the bill it is admitted that a judgment of ouster was rendered on the 18th day of December, 1931 in Chancery cause No. 12,239-D styled State of Florida, ex rel., Cary D. Landis, Attorney General, et al., vs. John A. Mahood, et al; that under the terms of this judgment the officers of the Town of North Miami were prohibited from exercising any municipal functions over that part of said Town lying East of Bay Biscayne; that the Town of North Miami appealed from said judgment, but the appeal was dismissed and that said judgment has now become final; that neither Complainant nor any other holder of bonds or coupons were made parties to said suit.

8. The allegations of Paragraph 9 concerning the outcome of numerous suits filed against the Clerk of the Circuit Court of Dade County to enjoin him from issuing tax deeds based upon tax certificates which had been issued by the Town of North Miami against certain properties located east of the Bay for the non-payment of taxes levied by said Town are also admitted; and it is further admitted that neither complainant nor any other bondholder were made parties to these suits.

9. From the evidence I further find that the total assessed valuation of all property within the former corporate limits of the Town of Miami Shores
319 now North Miami as of April 1st, 1931 was $4,781,300, the valuation placed upon the property east of the Bay being $3,048,938 and the valuation placed on the properties west of the Bay being $1,732,362; that for the tax year 1932, the prop-

erties east of the Bay were assessed at $1,845,140 and the properties west of the Bay were assessed at $880,-240; that for the tax year 1933 the assessed value of the lands east of the Bay was $1,839,480 and west of the Bay it was $882,854.00; that for the tax year 1934 the properties east of the Bay were assessed at a total valuation of $1,859,130.00 and those west of the Bay at $874,493.00.

I further find that the Town of North Miami actually collected from properties lying east of Bay Biscayne for the calendar year of 1931 the sum of $10,-362.64; that for the calendar year of 1932 the total amount of taxes collected from said territory was $5,-145.99; that in like manner the Town collected from said territory in the calendar year 1933 the sum of $7,889.45 and in the calendar year 1934 the sum of $5,268.64. That the various amounts collected as taxes from property west of the Bay for the years 1931 to 1934 inclusive were as follows:

In the calendar year 1931 $9,584.07; in the year 1932 $7,446.94; in the year 1933 $8,272.35 and in the year 1934, $14,205.93.

It is admitted in the pleadings that the total bonded debt of the Town of North Miami, incurred and now outstanding, amounts to $238,000; that of this total indebtedness as of June 1st, 1934 there was past due and unpaid upon the principal of this bonded indebtedness the sum of $88,000 together with accrued interest amounting to $50,145.00. All remaining allegations of Paragraph 12 of the bill are also admitted in the pleadings.

All of which is respectfully submitted at Miami, Florida, this 16th day of October, A. D. 1935.

T. J. DOWDELL,
Master in Equity.

320 NOTICE OF FILING MASTER'S REPORT OF TESTIMONY AND FINDINGS.

In the United States District Court, in and for the Southern District of Florida. No. 1248 M. Ey.

The Brown-Crummer Investment Company, a corporation organized and existing under and by virtue of the Laws of the State of Kansas, Plaintiff,

vs.

Town of North Miami, et al., Defendants.

To: Giles Patterson, Esq., Attorney for Plaintiff. Messrs. Patterson, Blackwell & Knight, Attorneys for Town of North Miami. Henry K. Gibson, Esq., Attorney for The Normandy Beach Dev. Co. etc. J. Julien Southerland, Esq., Messrs. Loftin, Stokes & Calkins, Attorneys for Ocean Beach Heights, Inc.:

You, and each of you, will please be advised that I have this day filed in the office of the Clerk of the above styled Court, the testimony heretofore taken in this cause before me, together with my findings and recommendations thereon.

Witness my hand, this the 16th day of October, A. D. 1935.

T. J. DOWDELL,
Master in Equity.

We, and each of us, do hereby acknowledge receipt of a true copy of the above and foregoing notice, together with a true and correct copy of the Master's

findings and recommendations herein, on this the 16th day of October, A. D. 1935.

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Attorney for Plaintiff.
PATTERSON, BLACKWELL & KNIGHT,
Attorneys for Town of North Miami.
HENRY K. GIBSON,
Attorney for the Normandy Beach Dev. Co.
J. JULIEN SOUTHERLAND,
LOFTIN, STOKES & CALKINS,
Attorneys for Ocean Beach Heights, Inc.

State of Florida,
County of Dade.

T. J. Dowdell being duly sworn says that he is the Master to whom the above styled cause was referred for the taking of testimony and reporting thereon together with his findings of fact; that on the 16th day of October, A. D. 1935 at 10 o'clock A. M. he did mail to Giles J. Patterson, Esq., Solicitor for the
321 Plaintiff herein, a true and complete copy of his Master's report of Findings with Notice of filing same, enclosed in an envelope bearing the requisite amount of United States uncanceled postage stamps addressed as follows:

Giles J. Patterson, Esq.,
Attorney at Law,
701 Florida National Bank Bldg.,
Jacksonville, Florida.,

by depositing said envelope properly sealed, stamped and addressed as aforesaid, in the post box located in the Olympia Building in the City of Miami, Florida;

and that the address on said envelope is the usual post office address of the Solicitor of Record for the Brown-Crummer Investment Company, plaintiff in the above entitled cause.

T. J. DOWDELL.

Sworn to and subscribed before me this 16th day of October, A. D. 1935.

ERNEST H. HUSTON,
Notary Public. State of Florida at Large. My commission expires: Aug-15-1939.

(Notary Public Seal).

On the 23rd day of October, A. D. 1935, the defendant, Ocean Beach Heights, Inc., filed Exceptions to the Master's Report, in the words and figures following, to-wit:

EXCEPTIONS TO THE MASTER'S REPORT.

In the United States District Court, in and for the Southern District of Florida, No. 1248-M-Eq.

The Brown-Crummer Investment Company a corporation organized and existing under and by virtue of the Laws of the State of Kansas, Plaintiff,

vs.

Town of North Miami, et al., Defendants.

Now comes the defendant, Ocean Beach Heights, Inc., a corporation, and excepts to the report of T. J. Dowdell, Esq., Master in Chancery, heretofore filed in this cause in the following particulars:

1. That said report is not a full and complete finding of all the facts necessary to be found in order properly to determine the case and issues.

2. That said report does not properly present the conclusions, from the evidence, as to the facts and circumstances surrounding the organization of the said Town of North Miami, formerly known as Miami Shores.

322 3. That said report erroneously states,

"I further find, from the evidence, that said Town of North Miami has no property subject to execution and no means of raising funds to pay the judgment heretofore procured by complainant other than by the exercise of its power of taxation in conformity with Section 1903 of the Revised General Statutes of Florida (1920)";

in that there is no evidence in the record to support said conclusion.

4. That said report erroneously states:

"That the sole security for the payment of said bonds was the power vested in said Town to levy such taxes upon all taxable property included within the Town limits at the time the bonds in controversy were issued and validated";

in that said conclusion is not supported by the evidence, because the evidence shows that the lands West of Biscayne Bay, subject to taxation by the said Town, are sufficient security for the payment of the Plaintiff's bonds and coupons.

5. That said report erroneously states that a portion of the proceeds of the bonds of the Plaintiff were expended "within the boundaries of the property lying east of the Bay," in that said conclusion is not supported by the evidence.

6. That said report fails to set out or refer to the facts shown by the evidence, that the community center of the said Town at the time of its organization,

and now, is located wholly West of Biscayne Bay; and that, at the time of the organization of the said Town, the lands East of Biscayne Bay were wild and unimproved, with very few persons living thereon; and that the lands East of Biscayne Bay are non-contiguous to the lands West of the Bay, and are at least nine miles from the community center of the said town; and that the public improvements made in the said town, with the proceeds of the said bonds, were all made on the lands West of Biscayne Bay.

7. That the Court has not before it in said Master's report, a complete summary or finding of facts, embodied in the evidence, and that the purpose of the Court in referring said cause to a Master to report the facts and all the facts deducible from the evidence has not been complied with, and that no fair
323 or just idea of the evidence in the case can be had from said Master's report.

8. The said report fails to find, as shown by the evidence, that the lands of Ocean Beach, Heights, Inc., which are east of Biscayne Bay, were never legally within the boundaries of the said Town.

9. The said report fails to find, as shown by the evidence, that the lands of Ocean Beach Heights, Inc., which are east of Biscayne Bay, were never legally subject to the jurisdiction, for the purpose of taxation or otherwise, of the officials of the said Town.

10. The said report fails to find, as shown by the evidence, that the lands of Ocean Beach Heights, Inc., which are east of Biscayne Bay, were never, and are not now, subject to taxation by the said Town.

11. The said report fails to find, as a matter of fact, as shown by the evidence, that the Supreme Court of Florida, in interpreting the Statutes of the State of Florida under which the said Town was organized, has held that the lands of Ocean Beach Heights, Inc., which are east of Biscayne Bay, were never a part of said Town.

12. The said report fails to find, as a matter of fact, as shown by the evidence, that the Supreme Court of Florida, in interpreting the Statutes of the State of Florida, has held that the lands of Ocean Beach Heights, Inc., which are east of Biscayne Bay, were never, and are not now, subject to taxation by the said Town.

J. JULIEN SOUTHERLAND,
LOFTIN, STOKES &
CALKINS,
By JNO. P. STOKES,
Solicitors for Defendant,
Ocean Beach Heights,
Inc.

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324 On the 10th day of February, A. D. 1936, the District Judge's Findings of Fact and Conclusions of Law were filed, in the words and figures following, to-wit:

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

In the United States District Court in and for the Southern District of Florida. In Equity. No 1248.

The Brown-Crummer Investment Company, a corporation organized and existing under and by virtue of the laws of the State of Kansas, Complainant,

vs.

Town of North Miami, formerly Town of Miami Shores, a municipal corporation, et al., Defendants.

Based upon the pleadings and all of the testimony introduced before the Honorable Thomas J. Dowdell.

Special Master in Equity, this Court does hereby make the following findings of fact:

1. That complainant is a citizen of the State of Kansas; that the amount in controversy exceeds the sum of $3,000, exclusive of interest and costs; and that this Court has jurisdiction over the parties and subject matter.

2. That the Town of Miami Shores, under the provisions of Sections 1825 to 1828, inclusive, of the Revised General Statutes of Florida (1920) was organized as a municipal corporation in the year 1926; that by subsequent Act of the Legislature of Florida, in the year 1931, the name of this municipality was changed to Town of North Miami. That subsequent to its organization in the year 1926 and until the final judgment of ouster was granted on December 18th, 1931, in the case of State ex rel v. Mahood, et al., said Town exercised all of the functions and powers granted to it by virtue of the Statutory Laws of Florida above set forth, over the territory East of the Bay Biscayne as well as the territory West of the Bay Biscayne; that the exercise of said municipal functions included policing the territory on both sides of the Bay, the Collection of garbage, mosquito eradication work, street repair work, the enforcement of building restrictions, and the issuance of building permits to resi-
325 dents living in territory East as well as West of the Bay Biscayne.

3. That complainant as owner and holder of past due municipal bonds and coupons secured a final judgment against the Town of North Miami on certain bonds and coupons issued March 1, 1928, in case numbered 1571 on the law side of this Court; that said judgment was rendered on June 19th, 1931 in the sum of $11,790. plus costs of $12.50 and that said judgment is recorded in Judgment Book No. 1 at

page 495; that the time for appeal from this judgment has expired. I further find that complainant is the owner and holder of many other bonds and coupons issued by said Town of Miami Shores, which said bonds and coupons have matured since the maturity of the bonds and coupons included in the judgment above mentioned, all of which are now past due and unpaid; that in addition to the bonds and coupons owned by complainant there are many other bonds and coupons issued by said town and owned by other bondholders which are unpaid; that the Town of North Miami has no property subject to execution and no means of raising funds to pay the judgment heretofore procured by complainant other than by the exercise of its power of taxation in conformity with Section 1903 of the Revised General Statutes of Florida (1920).

4. That by the terms of said bonds and under the Statute authorizing the issuance of same, the Town of Miami Shores, now known as the Town of North Miami, pledged its full faith and credit for the payment of said bonds, and each of said bonds recited that provision was made for the levy and collection, each year, while any of said bonds are outstanding and unpaid of sufficient taxes on all taxable property in said town to pay the principal and interest of said bonds.. The sole security for the payment of said bonds was the power vested in said Town to levy such taxes upon all taxable property included within the Town limits at the time the bonds in controversy were issued and validated.

5. I further find that the proceeds derived from the sale of the aforesaid bonds were expended by the Town of Miami Shores, now known as North Miami, in the construction of public improvements, which became a part of the permanent assets of said Town of Miami Shores, now North Miami, and as such are exempt from levy and sale, and a portion of the proceeds of

said bonds was expended within the boundaries of the property lying East of the Bay Biscayne, which is particularly described in Paragraph 8 of the bill of complaint and which said lands include properties now owned by all of the individual defendants herein, and that the lands East of Bay Biscayne were originally included within the corporate limits of said Town of Miami Shores, now North Miami, when the bonds herein described were issued and sold. That the said property East of Bay Biscayne was subdivided in lots and streets were platted and constructed and said plats were filed as the official plats of said territory in the public records of Dade County and bear the seal and approval of the Town of North Miami (formerly Miami Shores) on the face thereof. That the owners of property East of the Bay had knowledge of the fact that their lands were included in the town limits. That 125th Street causeway was under construction in 1926 and a greater part of the same was actually under construction to connect lands on the east and west sides of Biscayne Bay but said construction was destroyed by the hurricane in 1926.

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6. That it is admitted that none of the defendants herein nor any other property owners of said Town made any objection to the inclusion of their property within the limits of said Town of North Miami, formerly Miami Shores, nor did any of them institute legal proceedings to have their respective properties excluded from the limits of said Town until the 12th day of August, 1929, when quo warranto proceedings were filed in the Circuit Court, in and for Dade County, Florida. It is further admitted that after these bonds had been authorized, a validation suit was filed in said Circuit Court of Dade County which resulted in a final decree of validation, to which none of these defendants interposed any objection nor did any of them file any proceedings seeking to restrain the issuance of bonds

or attacking their validity. It is also admitted that no appeal was ever taken from the decree of validation nor was any objection made to the spending of the proceeds derived from the sale of said bonds for the purposes named. On the 12th day of August, 1929, there was filed in the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, a Writ of quo warranto on behalf of the State of Florida ex rel. Fred H. Davis, Attorney General, and North Island Investment Company, a corporation; Indian Creek Golf Club; The Normandy Beach De-
327 velopment Company, a corporation, et al., against the Town of North Miami, commanding the officials of said Town to show cause by what authority they claimed to exercise their offices over the territory lying east of the Bay Biscayne as described in Paragraph 8 of the bill of complaint, which said lands include the properties owned by all the defendants herein, and that judgment of ouster was rendered on the 18th day of December, 1931, and by the terms of said judgment the officers of the Town of North Miami were ousted, excluded and prohibited from exercising the offices, franchises and privileges of a municipality or municipal corporation, and of the mayor, councilman, tax collector, clerk and Town Marshal thereof, under the purported license, incorporation and/or charter of the Town of North Miami, over or upon the property described in Paragraph 8 of the bill of complaint in this cause; that the Town of North Miami appealed from said judgment but the appeal was dismissed and said judgment has now become final. That neither the complainant nor any other holders of bonds or coupons were parties to said suit.

On March 25, 1931, Normandy Beach Development Company filed a suit in the Circuit Court of Dade County against E. B. Leatherman, as Clerk of the Circuit Court of Dade County, to cancel certain tax

certificates issued by the Town of Miami Shores against their property, and to enjoin the issuance of a tax deed on valuable property claimed to be owned by the Normandy Beach Development Company. A temporary injunction was granted without notice, and is still in force and effect. On October 20th, 1932, Biscayne Park Estates, a Florida corporation, filed a suit against Washington Owners, Inc., a Florida Corporation, and E. B. Leatherman, as Clerk of the Circuit Court, and the Town of North Miami, to enjoin the issuance of tax deeds against certain property west of Biscayne Bay, and a temporary injunction without notice was also granted against the Clerk of the Circuit Court. A quo warranto suit was filed on June 9th, 1932, entitled "State of Florida, ex rel Cary D. Landis, Attorney General, and Harvey B. Graves and Annie M. Johnson, co-relators, against the Town of North Miami, formerly Miami Shores" to exclude one thousand thirty acres of land comprising the northern portion of the lands within the Town of North Miami,
formerly Miami Shores, lying west of Bis-
328 cayne Bay. Neither the complainant nor any other bondholders were made a party to these suits.

7. I find that the total assessed valuation of all property within the corporate limits of the Town of Miami Shores, now North Miami, as of April 1st, 1931, was $4,781,300, the valuation placed upon the property east of the Bay being $3,048,938 and the valuation placed on the property west of the Bay being $1,732,362; that for the tax year 1932 the properties east of the Bay were assessed at $1,845,140 and the properties west of the Bay were assessed at $880,240; that for the tax year 1933 the assessed value of the lands east of the Bay was $1,839,480 and west of the Bay it was $882,854; that for the tax year 1934 the properties east of the Bay were assessed at a valuation of $1,859,13[illegible] and the property west of the Bay at $874,493.00.

I further find that the Town of North Miami actually collected from properties lying east of Bay Biscayne for the calendar year 1931 the sum of $10,-362.64 and for the calendar year 1932 the sum of $5,-145.99 and for the calendar year 1933 the sum of $7,-889.45 and in the calendar year 1934 the sum of $5,-268.64. That the taxes collected from properties west of the Bay Biscayne were as follows: In the calendar year 1931, $9,584.07; in the calendar year 1932, $7,-446.94; in the year 1933, $8,272.35 and in the year 1934, $14,205.93.

The total bonded debt of the Town of North Miami now outstanding, amounts to $238,000 and of this total indebtedness as of June 1st, 1934 there was past due and unpaid upon the principal of this bonded indebtedness the sum of $88,000 together with accrued interest amounting to $50,145.00.

Complainant obtained an alternative writ of mandamus on October 7, 1930, against the Town of North Miami, formerly Miami Shores to compel a levy of ad valorem taxes for the payment of the judgment obtained in this cause. Petitions of intervention were filed by the Normandy Beach Development Company, a corporation, North Island Investment Company, a corporation, Tatum's Ocean Park Company, a corporation, Ocean Beach Heights, Inc., a corporation, Surf Hotel Corporation, a corporation, D. Richard Mead, as Trustee in Bankruptcy of Indian Creek Holding Company, a corporation, Creek Realty Company, a corporation, Home Mortgage Company, a corporation, Lucille F. Ensign and her husband Walter C. Ensign, Indian Creek Club, a corporation, (formerly Indian Creek Golf Club, a corporation) and said defendants were permitted to become parties defendant in said mandamus proceedings, and to file answers and defenses to the issuance of the peremptory writ therein.

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Testimony was taken upon the answers filed by the interveners and all of the questions of fact and law were determined by this Court in favor of the relator and a peremptory writ of mandamus issued on the 24th day of January, 1933. Thereafter the said interveners, the Normandy Beach Development Company, a corporation, Home Mortgage Company, a corporation, Ocean Beach Heights, Inc., Tatum's Ocean Park Company, Surf Hotel Corporation, and Lucille F. Ensign, joined by her husband Walter C. Ensign, prepared and filed a petition for the allowance of an appeal and after causing themselves to be severed from the Town of North Miami, formerly Miami Shores, and its officials who did not appeal, the Circuit Court of Appeals for the Fifth Judicial Circuit dismissed the appeal of said interveners on February 15th, 1934.

8. The Town of North Miami in response to the peremptory writ of this Court prepared its budget for the year 1932 and included in said budget a levy of 19 mills against the property east of the Bay Biscayne. That said levy was made to pay the proportionate part of the bonded debt and expenses of collecting the same, but no levy was made against said properties to pay for any expenses of the Town except those necessary in the levy and collection of taxes to pay its Bonded debt.

Conclusions of Law.

The complainant is not bound by the decisions of the State Court above referred to, as it was not a party nor were any bondholders parties to any of said proceedings. The rights of bondholders stand upon a different ground than the rights of landowners, in reference to the matters under consideration.

The defendant interveners are guilty of laches and in fact, acquiescence in the bond issue for more than three years, permitting meanwhile, with knowledge, the

bonds to be sold to the public upon the representation and belief that back of them stood the property in question for taxation, because of the fact that some of the proceeds of the sale of these bonds was in fact spent for public improvements upon the property in question and accepted by the property owners.

The organization and proceedings of the Town of North Miami, in the issue of these bonds, is a fine example of the boom time psychology and faith of the people in Florida. These bonds were issued in the belief that the Town would become a great place with thousands of inhabitants, stretching all around the Bay of Biscayne, a bridge across the Bay was in fact in the course of construction and property owners were ready to permit any amount of bonds to be sold to the public investors for public improvements, believing that the future increase in population and values would easily pay them out. The great enthusiasm and imagination lead to extravagance which is now startling. When the financial orgy passed and values slumped and taxes became a burden and the time of payment on the bonds arrived, property owners then attempt to repudiate the payment of these bonds and to extract their properties from under the burden.

If the property East of Biscayne Bay can be whittled away from this Town and other territory possibly by some other proceedings may be likewise extracted, it will readily be seen that there will be little left upon which taxes for these bond payments can be levied and eventually there might remain only the Town Hall, which is untaxable. The answer of the Town in the mandamus suit, states the situation.

The bondholders cannot be thus treated. The innocent holders of these bonds had a right to rely upon the conditions represented as existing at the time these

bonds were issued, when it was claimed and asserted by everybody that the Town limits included the land now sought to be excluded. On the faith of that the bonds were bought.

It is a matter of general commercial law that is involved; the rights of contract which cannot be avoided by judicial construction. The authorities are numerous that the Federal Courts are not bound under the consideration of such law by State decisions, but they exercise their own judgment. By the Quo Warranto proceeding in the State Court, the Town and its officers may be ousted from general jurisdiction over the property East of Biscayne Bay for municipal
331 purposes, but cannot be ousted from the levy and collection of taxes for these bonds, as directed by this Court.

Fetzir vs. Johnson, 15 Fed. (2d) 145.

"The National Constitution forbids the States to pass laws impairing the obligation of contracts. In cases properly brought before us that end can be accomplished, unwarrantably no more by judicial decisions than by legislation. Were we to yield in cases like this to the authority of the decisions of the Courts of the respective States, we should abdicate the performance of one of the most important duties with which this tribunal is charged and disappoint the wise and salutary policy of the framers of the Constitution in providing for the creation of an independent Federal Judiciary."

Township of Pine Grove vs. Talcott, 19 Wall 666, 86 U. S. Rep.
Stanley County vs. Coler, 190 U. S. 437.
Fulsom vs. Township, 159 U. S. 611.
Burgess vs. Seligman, 107 U. S. 20.
Herron vs. S. P. Co. 283 U. S. 91

The doctrine of the Federal Courts in cases of this character is expressed in Bourbon County vs. Block, 99 U. S. 686—

"We have not overlooked the opinion delivered by the Supreme Court of the State in Lewis vs. Commissioners. The judgment in the case was not given until after the bonds were issued, and after the rights of the holders thereof had become fixed. We are, therefore, at liberty to follow our own convictions of the law. To those expressed by the State Court we cannot assent. They are not in harmony with many rulings of this Court made and respected through a long series of years and they are not such as in our opinion would administer substantial justice if applied to this case."

Clapp vs. Otoe County, 104 Fed. 473.
Comanche County vs. Lewis, 133 U. S. 198.

I held in my former opinion in this case that the laws in existence at the time these bonds were executed warranted the inclusion of the territory in question as part of the taxing district when these bonds were issued.

Cooleys' Constitutional Limitations, Volume 1, Page 598, states—

"It has been held that where a statute authorized a municipal corporation to issue bonds and to
332 exercise the power of legal taxation in order to pay them and persons bought and paid value for bonds issued accordingly, this power of taxation is part of the contract and cannot be withdrawn until the bonds are satisfied; that an attempt to repeal or restrict it by statute, is void, and that unless the corporation imposes and collected the taxes in all respects

as if the subsequent statute had not been passed, it will be compelled to do so by mandamus."

A State judicial decision can no more impair the contract in question than can a legislative act.

Mobile vs. Watson, 116 U. S. 289.
Humphrey vs. State, 108 Fla. 92, 145 So. 858.

Town of Perry vs. Sampson, 17 Fed. (2d) 1, 5th Circuit.

The fact that the bonds have been reduced to judgment does not alter plaintiff's rights. The judgment carries with it all rights which attached to the original bonds and coupons.

Ralls County vs. United States, 105 U. S. 733.
United States vs. Knox County, 122 U. S. 306.
State vs. Livingston, 103 Fla. 841, 139 So. 364.

This injunction suit is in aid of the mandamus heretofore issues. The petition sets up a condition, which, if proven, must be unblocked to make this Court's decree effective.

Dated at Miami, Florida, this 10th day of February, A. D. 1936.

HALSTED L. RITTER,
Judge.

On the 10th day of February, A. D. 1936, the Final Decree was entered, and, on the same date, was

filed in the Clerk's office and recorded in Equity Journal 4, Page 323, in the words and figures following, to-wit:

333 FINAL DECREE.

In the United States District Court in and for the Southern District of Florida. No. 1248-M-Eq.

The Brown-Crummer Investment Company, a corporation organized and existing under and by virtue of the laws of the State of Kansas, Complainant,

vs.

Town of North Miami, formerly Town of Miami Shores, a municipal corporation, et al., Defendants.

This matter coming on before the Court on application for final decree in this cause, and the Court having heretofore executed its findings of fact and conclusions of law as required by Federal Equity Rule 70½, it is hereby

Ordered, Adjudged And Decreed:

1. That the equities in this case are with the complainant.

2. That bill of complaint having been filed by the complainant on behalf of itself and all other bondholders as a class, said suit is a class suit within the provisions of the federal statutes relating thereto.

3. That complainant is entitled to the relief prayed for in the bill of complaint.

4. That the defendants, D. Richard Mead, as Trustee in Bankruptcy of Indian Creek Holding Company,

a corporation, the Normandy Beach Development Company, a corporation, Lucille F. Ensign, joined by her husband Walter C. Ensign, Ocean Beach Heights, Inc., a corporation, Tatum's Ocean Park Company, a corporation, Indian Creek Club, a corporation, (formerly Indian Creek Golf Club, a corporation), or any other person, firm or corporation owning, holding or interested in any property within the boundaries of the Town of North Miami, formerly Miami Shores, and who holds, owns or is interested in said property under and by virtue of title from any of said defendants above named, are hereby enjoined and restrained from instituting any action at law or in equity or from prosecuting any action now pending against E. B. Leatherman, Clerk of the Circuit Court of Dade County, or his successor or successors in office, to compel the cancellation of any tax certificates held by him and issued by the Town of North Miami, formerly Miami Shores, on account of the non-payment of taxes levied by it on property within the area above described, or preventing him from selling said tax certificates or issuing tax deeds thereon. Said Ocean Beach Heights, Inc., is hereby enjoined and restrained from enforcing the decree of the Circuit Court of Dade County, declaring void the tax certificates described in the suit of Alta Cliff Company, et al vs. E. B. Leatherman, et al., which was instituted in the Circuit Court of Dade County, Florida, and from preventing by any legal action, issuance of tax deeds upon said certificates.

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5. That the defendants, D. Richard Mead, as Trustee in Bankruptcy of Indian Creek Holding Company, a corporation, the Normandy Beach Development Company, a corporation, Lucille F. Ensign, joined by her husband Walter C. Ensign, Ocean Beach Heights, Inc., a corporation, Tatum's Ocean Park Company, a corporation, Indian Creek Club, a corporation, (form-

erly Indian Creek Golf Club, a corporation), are hereby enjoined and restrained from preventing in any manner or interfering with the levy, collection or enforcement by the Town of North Miami, or any of its officials, of any tax already levied or which may hereafter be levied by the officials of said town for the payment of the judgment of the complainant or for the payment of any bonds or coupons or interest accruing upon the same.

6. That the defendant Town of North Miami, its officers and agents, D. W. Ribbins, as Mayor, J. H. Gribble, as Tax Collector and Tax Assessor, Mrs. E. May Avil, as Clerk and Treasurer of said town, and E. C. Harner, Mrs. Cecille Sevier, Mrs. Ella F. Klefeker, D. D. Avil and H. W. Jones, members of the Town Council of the Town of North Miami, formerly Miami Shores, and the successors in office of any and all of the foregoing officers of the Town of North Miami, formerly Miami Shores, be and they are hereby enjoined and restrained from refusing to perform in full his or their legal duties in the matter of assessing, levying and collecting taxes and/or assessments which may have been heretofore already levied by the Town of North Miami, or which may hereafter be levied by it or by its duly authorized officers and agents against lands included within the following area:

335 "Commencing for a point of beginning at the intersection of the high water mark of the Atlantic Ocean with the south boundary line of fractional Section 35 in Township 52 South, Range 42, Dade County, Florida, run West along the south boundary line of Section 35 and continue along the south line of sections 33 and 34 to the intersection of the eastern boundary of the City of Miami: thence north northeasterly along the said eastern limits of the City of Miami, produced a distance of 2750 feet; thence

in a northeasterly direction to the northeast corner of fractional Section 27, Township 52 South, Range 42 East; thence continue in a northeasterly direction deflecting to the left from the last mentioned course to the northeast corner of the southwest one-quarter (SW¼) of the southwest one-quarter (SW¼) of a fractional section 23-52-42; thence north along the east line of the west one-half (W½) of the west one-half (W½) of fractional Section 23-52-42 the north boundary of said Section 23; thence east along the said north boundary line of said Section 23 to the intersection of the highwater mark of the Atlantic Ocean; thence continue east along the last mentioned course produced a distance of 1500 feet; thence in a southerly direction parallel to and 1500 feet east of the highwater meander line of the Atlantic Ocean to the south line of fractional Section 35, Township 52 South, Range 42 East, produced easterly; thence west along the last said south line of Section 35 to a point of beginning,"

being the lands east of the Bay of Biscayne, and specifically described in the final decree of ouster entered by the Circuit Court of Dade County, Florida, in the case of State ex rel v. Mahood, et al., for debt service, and the said Town of North Miami, formerly Miami Shores, and its said officers and agents and their successors in office, are hereby enjoined from failing or refusing to take any action or to institute any proceedings which may be required by the statute in such cases made and provided for compelling the payment of any taxes and assessments heretofore levied by the said Town of North Miami, formerly Miami Shores, or which may hereafter be
336 levied for the purpose of providing funds with which to pay the judgment of the complainant, The Brown-Crummer Investment Company, or the bonds owned and held by it or the coupons which have heretofore matured or which may hereafter

mature upon any of said bonds, or for the bonds or coupons issued by the said Town of North Miami, formerly Miami Shores, which may be held by any other persons than the complainant herein; and are further enjoined from refusing to perform either the levy of taxes, as required by law, the sale of the property for the non-payment of taxes, the issuance of tax certificates, the sale of tax certificates, the issuance of tax deeds or the institution of any foreclosure proceedings for the enforcement of the payment of the said taxes, or any other duties required of them to be performed by the statutes of the State of Florida for the collection of taxes levied by the Town of North Miami, formerly Miami Shores.

7. Said E. B. Leatherman, as Clerk of the Circuit Court of Dade County, and his successors in office, are hereby enjoined and restrained from canceling or destroying any tax certificates issued by the Town of North Miami, formerly Miami Shores, on account of the non-payment of taxes levied by it against property within the limits of said territory east of the Bay Biscayne described in Paragraph 6 hereof, and are further restrained and enjoined from refusing to deliver the same to the taxpayers or property owners therein or to any other person whomsoever except by way of redemption or purchase in accordance with the laws of the State of Florida; and it is further

Ordered, Adjudged And Decreed that the foregoing injunctions shall not be construed as restraining the said defendants, D. Richard Mead, as Trustee in Bankruptcy of Indian Creek Holding Company, a corporation, the Normandy Beach Development Company, a corporation, Lucille F. Ensign, joined by her husband Walter C. Ensign, Ocean Beach Heights, Inc., a corporation, Tatum's Ocean Park Company, a corporation, Indian Creek Club, a corporation, (formerly

Indian Creek Golf Club, a corporation), from enjoining or otherwise restraining or preventing the levy, assessment and collection of taxes for any purpose other than the payment of the bonds and coupons of said town, and shall not be construed as restraining said E. B. Leatherman, as Clerk of the Circuit Court of Dade County, Florida, or his successors in
337 office, from refusing to enforce the tax certificates for any sums due to the said town, except such sums as may be levied for the payment of the principal and interest of said bonds, and shall not be construed as enjoining said defendants, Town of North Miami, its officers and agents, D. W. Robbins, as Mayor, J. H. Gribble, as Tax Collector and Tax Assessor, Mrs. E. May Avil, as Clerk and Treasurer of said town, and F. C. Harner, Mrs. Cecille Sevier, Mrs. Ella F. Klefeker, D. D. Avil and H. W. Jones, members of the Town Council of the Town of North Miami, formerly Miami Shores, from refusing to levy, assess and collect taxes for any purpose other than the payment of the judgment of the complainant and the bonds and coupons issued by said town.

This decree is in the nature of a mandatory injunction directing compliance with the Alternative Writ of Mandamus heretofore issued by this Court.

Done And Ordered in Chambers at Miami, Florida this 10th day of February, A. D. 1936.

HALSTED L. RITTER,
District Judge.

On the 7th day of April, A. D. 1936, Certificate of the Clerk was filed, in the words and figures following, to-wit:

CERTIFICATE OF CLERK.

(Title Omitted.)

I, Edwin R. Williams, as Clerk of the United States District Court in and for the Southern District of Florida, Do Hereby Certify that, according to the records and files in my office, no service of process has been made on the Defendants, North Island Investment Company, a Florida corporation, Creek Realty Company, a Florida corporation, Home Mortgage Company, a Michigan corporation, and
338 Surf Hotel Corporation, a Florida corporation, in the above-entitled cause, and that the said Defendants have not appeared nor filed any pleadings in said cause.

In Testimony Whereof, I have hereunto set my hand and affixed the official seal of said Court at Miami, Florida, this 7th day of April, A. D. 1936.

EDWIN R. WILLIAMS,
Clerk of the United States District Court in and for the Southern District of Florida.

By RUTH J. ROSEMOND,
(District Court Seal) Deputy Clerk.

On the 6th day of April, A. D. 1936, Notice of Severance and Invitation to Join in the Appeal was filed, in the words and figures following, to-wit:

NOTICE OF SEVERANCE AND INVITATION TO JOIN IN THE APPEAL.

(Title same as foregoing paper.)

To the Defendants:

Town Of North Miami, a municipal corporation; Dana W. Robbins as Mayor of said Town; J. H. Gribble as Tax Collector and Tax Assessor of the said Town; Mrs. E. May Avil as Clerk and Treasurer of the said Town; and E. C. Harner, Mrs. Cecille Sevier, Mrs. Ella F. Klefeker, D. D. Avil and H. W. Jones as members of the Town Council of the said Town, and their Solicitors of record;

D. Richard Mead as Trustee in Bankruptcy of Indian Creek Holding Company, a corporation, and his Solicitor of record;

Indian Creek Club, a corporation, and its Solicitors of record;

E. B. Leatherman as Clerk of the Circuit Court of Dade County, Florida, and his Solicitor of record.

Please Take Notice that on the 6th day of April, 1936, at the hour of 9.30 o'clock A. M., the Defendants, Ocean Beach Heights, Inc., a corporation, Normandy Beach Development Company, a corporation, Lucille F. Ensign and her husband, Walter C. Ensign, and Tatum's Ocean Park Company, a corporation, will ap-

ply to the Honorable Louie W. Strum as Judge of the United States District Court in and for the Southern District of Florida, at his office in the United States Post Office Building in Miami, Florida, for
339 the allowance of an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, from the decree entered in said cause on February 10, 1936, recorded in Equity Journal 4, at page 323, in the office of the Clerk of the said Court at Miami, Florida.

You Are Hereby Invited And Requested to join in such appeal.

Dated this April 4, 1936.

LOFTIN, STOKES & CALKINS,
By N. J. ROSENSTEIN,
Solicitors for the Defendant, Ocean Beach Heights, Inc., a corporation.
HENRY K. GIBSON,
Solicitor for the Defendants, Normandy Beach Development Company, a corporation; Lucille F. Ensign and her husband, Walter C. Ensign; and Tatum's Ocean Park Company, a corporation.

Due And Legal Service of the above and foregoing notice, invitation and request is hereby acknowledged.

The undersigned Defendants hereby decline to join in the said appeal and consent to a severance as to.

them, and respectfully request that they be aligned as parties appellee to said appeal.

Dated at Miami, Florida, this April 4th, 1936.

TOWN OF NORTH MIAMI,
A municipal corporation;
DANA W. ROBBINS,
As Mayor of said Town;
J. H. GRIBBLE,
As Tax Collector and Tax Assessor of said Town;
MRS. E. MAY AVIL,
As Clerk and Treasurer of said Town; and
E. C. HARNER,
MRS. CECILLE SEVIER,
MRS. ELLA F. KLEFEKER,
D. D. AVIL and
H. W. JONES,
As members of the Town Council of said Town, Defendants,
By T. J. BLACKWELL,
Solicitor for the said Defendants.

Due And Legal Service of the above and foregoing notice, invitation and request is hereby acknowledged.

The undersigned Defendant hereby declines to join in the said appeal and consents to a severance as to him.

Dated at Miami, Florida, this April 4, 1936.

E. B. LEATHERMAN,
As Clerk of the Circuit Court of Dade County, Florida, Defendant,
By BART A. RILEY,
Solictor for said Defendant.

Due And Legal Service of the above and foregoing notice, invitation and request is hereby acknowledged.

The undersigned Defendant hereby declines to join in the said appeal and consents to a severance as to him.

Dated at Miami, Florida, this April 4th, 1936.

D. RICHARD MEAD as Trustee in Bankruptcy of Indian Creek Holding Company, a corporation, Defendant,
By RUSSELL M. YATES,
Solicitor for said Defendant.

Due And Legal Service of the above and foregoing notice, invitation and request is hereby acknowledged.

The undersigned Defendant hereby declines to join in the said appeal and consents to a severance as to it.

Dated at Miami, Florida, this April 4th, 1936.

INDIAN CREEK CLUB, a corporation not for profit, Defendant,
By McKAY, DIXON & DeJARNETTE,
By JAMES A. DIXON,
Solicitors for said Defendant.

On the 6th day of April, A. D. 1936, Motion for Order Granting Severance As To Certain Defendants was filed, in the words and figures following, to-wit:

MOTION FOR ORDER GRANTING A SEVERANCE AS TO CERTAIN DEFENDANTS.

(Title same as foregoing paper).

The Defendants, Ocean Beach Heights, Inc., a corporation, Normandy Beach Development Company, a corporation, Lucille F. Ensign and her husband, Walter C. Ensign, and Tatum's Ocean Park Company, a corporation, represent unto the Court that there has been no service of process on the Defendants, North Island Investment Company, a Florida corporation, Creek Realty Company, a Florida corporation, Home Mortgage Company, a Michigan corporation, and Surf Hotel Corporation, a Florida corporation, and that the said Defendants have not appeared nor filed any pleadings in the above-entitled cause; that the Defendants, Indian Creek Club, a corporation, D. Richard Mead as Trustee in Bankruptcy of Indian Creek Holding Company, E. B. Leatherman as Clerk of the Circuit Court of Dade County, Florida, Town
341 of North Miami, a municipal corporation, Dana W. Robbins as Mayor of said Town, J. H. Gribble as Tax Collector and Tax Assessor of the said Town, Mrs. E. May Avil as Clerk and Treasurer of the said Town, and E. C. Harner, Mrs. Cecille Sevier, Mrs. Ella F. Klefeker, D. D. Avil and H. W. Jones as members of the Town Council of said Town, have declined to join in the appeal and have consented to a severance as to them.

The premises considered, the said Defendants-Appellants, Ocean Beach Heights, Inc., a corporation, Normandy Beach Development Company, a corpora-

tion, Lucille F. Ensign and her husband, Walter C. Ensign, and Tatum's Ocean Park Company, a corporation, respectfully move the Court to enter an order herein granting a severance as to the said Defendants upon whom no service has been made and who have not appeared nor filed any pleadings in the above-entitled cause, and as to those Defendants who have declined to join in said appeal and have consented to such severance.

J. JULIEN SOUTHERLAND,
LOFTIN, STOKES &
CALKINS,
By N. J. ROSENSTEIN,
Solicitors for the Defendant,
Ocean Beach Heights, Inc.
HENRY K. GIBSON,
Solicitor for the Defendants,
Normandy Beach Development Company, a corporation, Lucille F. Ensign and her husband, Walter C. Ensign, and Tatum's Ocean Park Company, a corporation.

342 On the 10th day of April, A. D. 1936, Petition For Appeal was filed, in the words and figures following, to-wit:

PETITION FOR APPEAL.

In the United States District Court, in and for the Southern District of Florida. No. 1248-M-Eq.

Ocean Beach Heights, Inc., a corporation, Normandy Beach Development Company, a corporation, Lucille F. Ensign and her husband, Walter C. Ensign, and Tatum's Ocean Park Company, a corporation, Appellants,

vs.

The Brown Crummer Investment Company, a Kansas corporation, Town of North Miami, a municipal corporation, Dana W. Robbins as Mayor of said Town, J. H. Gribble as Tax Collector and Tax Assessor of said Town, Mrs. E. May Avil as Clerk and Treasurer of said Town, and E. C. Harner, Mrs. Cecille Sevier, Mrs. Ella F. Klefeker, D. D. Avil and H. W. Jones as members of the Town Council of said Town, Appellees.

To: The Honorable L. W. Strum, District Judge:

The above-named Ocean Beach Heights, Inc., a corporation, Normandy Beach Development Company, a corporation, Lucille F. Ensign and her husband, Walter C. Ensign, and Tatum's Ocean Park Company, a corporation, feeling aggrieved by the Final Decree, signed and entered in the above-stated cause on the 10th day of February, A. D. 1936, and by the Order overruling and denying said Defendants'-Appellants' Motions to Dismiss, signed and entered in the above-stated cause on the 25th day of April, A. D. 1935, do hereby appeal from the said Final Decree and the said Order to the Circuit Court of Appeals for the Fifth

Circuit, for the reasons set forth in the Assignments of Errors filed herewith, and they pray that their appeal be allowed, and that citation be issued, as provided by law, and that a transcript of the record, proceedings and documents upon which said Final Decree and Order were based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Fifth Circuit, under the rules of such Court in such cases made and provided.

OCEAN BEACH HEIGHTS, INC.,

343 By J. JULIEN SOUTHERLAND, and
LOFTIN, STOKES & CALKINS,
By N. J. ROSENSTEIN,
Its Solicitors.

NORMANDY BEACH DEVELOPMENT COMPANY, LUCILLE F. ENSIGN and her husband, WALTER C. ENSIGN, and TATUM'S OCEAN PARK COMPANY,
By HENRY K. GIBSON,
Their Solicitor.

On the 10th day of April, A. D. 1936, Appellants filed Assignments of Errors, in the words and figures following, to-wit:

ASSIGNMENTS OF ERRORS.

(Title same as foregoing paper.)

Now comes the Defendants-Appellants in the above-entitled cause and file, separately as to each of them,

the following joint and several assignments of errors, on which each will rely on the prosecution of the appeal in the above-entitled cause from the Final Decree made by the Honorable the United States District Court in and for the Southern District of Florida on the 10th day of February, A. D. 1936, and from the Order overruling and denying said Defendants'-Appellants' Motions to Dismiss the Bill of Complaint, made by the said Court on the 25th day of April, A. D. 1935;

1. The said District Court erred in overruling and denying the Motion of Ocean Beach Heights, Inc. to dismiss the Bill of Complaint.

2. The said District Court erred in overruling and denying the Motion of Normandy Beach Development Company to dismiss the Bill of Complaint.

3. The said District Court erred in overruling and denying the Motion of Lucille F. Ensign and her husband, Walter C. Ensign, to dismiss the Bill of Complaint.

4. The said District Court erred in overruling and denying the Motion of Tatum's Ocean Park Company to dismiss the Bill of Complant.

344 5. The said District Court erred in finding that the Town of North Miami exercised any functions and powers granted to it by the Laws of the State of Florida over the territory east of Biscayne Bay, because under the Laws of the State of Florida the said Town had no jurisdiction and no powers whatever over the said territory.

6. The said District Court erred in finding that the Town of North Miami has no means of raising funds to pay the bonds and coupons held by The Brown Crummer Investment Company, Appellee,

other than by the exercise of its power of taxation over any of the territory east of Biscayne Bay, because it affirmatively appears from the pleadings and evidence that the said Town's power of taxation over the territory west of Biscayne Bay is sufficient to raise the funds necessary to pay said bonds and coupons and the judgment thereon.

7. The said District Court erred in finding that the sole security for the payment of the said bonds was the power vested in said Town to levy taxes upon all taxable property included within the Town limits at the time the bonds in controversy were issued and validated, because the said Town never has been vested with any jurisdiction over or any power to tax the territory east of Biscayne Bay, but the security for the payment of said bonds is the said Town's power to tax the territory west of said Biscayne Bay.

8. The said District Court erred in finding that a portion of the proceeds from the said bonds was expended for the benefit of any of the territory lying east of Biscayne Bay.

9. The said District Court erred in finding that the lands east of Biscayne Bay were originally included within the corporate limits of said Town of North Miami when the said bonds were issued and sold, because the said lands east of Biscayne Bay, under the Laws of the State of Florida, never were legally within the boundaries of the said Town.

10. The said District Court erred in finding that the effect of the judgment of ouster entered by the State Court against the said Town of North Miami was to oust, exclude and prohibit the officers of said Town from exercising jurisdiction and powers over the territory east of Biscayne Bay, because the Supreme Court of Florida, in interpreting the Florida

Statutes, under which the said Town was organized, held, in effect, that there was no necessity to
345 exclude the said territory from the jurisdiction of said Town for the reason that the said territory ab initio was not within the jurisdiction of the said Town.

11. The said District Court erred in concluding that the Appellants were guilty of laches and acquiescence in the bond issue, because there can be no estoppel to question the inherent lack of jurisdiction in the said Town and because no amount of acquiescence can give jurisdiction where it is inherently lacking.

12. The said District Court erred in concluding that the bonds in question were sold to the public upon any representaiton made by the Appellants, because there is no evidence whatsoever to support the said conclusion, and because of its inherent lack of jurisdiction the said Town was without authority to bind the Appellants by virtual representation or otherwise.

13. The said District Court erred in concluding that any of the proceeds from the sale of said bonds was in fact spent for public improvements upon the property of the Appellants.

14. Said District Court erred in concluding that it had been claimed and averred by everybody that the said Town limits included the land east of Biscayne Bay, because at the time the said bonds were issued the Statutes of the State of Florida under which the said Town was organized had not been interpreted by the Supreme Court of the State but subsequently thereto the Supreme Court of the State unequivocally interpreted the said Statutes and held that the lands east of Biscayne Bay never were legally within the said Town, and the said interpretation of the State Statutes by the Supreme Court of the State is binding on the Federal Courts.

15. Said District Court erred in concluding that the rights of contract involved in said suit cannot be avoided by judicial construction, because an unequivocal judicial construction of a State Statute by the Supreme Court of the State does not come within the protection of the prohibition of the Federal Constitution against the impairment of obligations of contracts.

16. The District Court erred in concluding that the Federal Courts are not bound by the decision of the State Supreme Court interpreting said Statutes, because the authorities relied on by the District Court have been unequivocally and consistently overruled by the Supreme Court of the United States.

346 17. The said District Court erred in concluding that the quo warranto proceedings in the State Court only ousted the lands east of Biscayne Bay from the general jurisdiction of the said Town for municipal purposes and not from the levy and collection of taxes by the said Town, because the effect of the judgment in the said quo warranto proceedings was an adjudication that the said Town, ab initio, was without authority to exercise any jurisdiction and powers over the said lands east of Biscayne Bay.

18. The said District Court erred in entering the Final Decree, dated February 10, 1936, because the said District Court was without jurisdiction of the controversy which was not wholly between citizens of different states.

19. The said District Court erred in entering the Final Decree, dated February 10, 1936, because the said matter in controversy did not arise under the Constitution or Laws of the United States.

20. The said District Court erred in entering the Final Decree, dated February 10, 1936, because the adjudications therein are contrary to the unequivocal

decision of the Supreme Court of Florida interpreting the Statutes of the State of Florida solely on which the rights of the parties depend.

Wherefore, the defendants-appellants, jointly and severally, pray that the said Final Decree and the said Order appealed from be reversed and that the said District Court for the Southern District of Florida be ordered to enter an order reversing the decision of the lower Court in said cause.

J. JULIEN SOUTHERLAND,
and
LOTFIN, STOKES & CALKINS,
By N. J. ROSENSTEIN,
Solicitors for Ocean Beach Heights, Inc., Defendant-Appellant.
HENRY K. GIBSON,
Solicitor for Normandy Beach Development Company, Lucille F. Ensign and Walter C. Ensign, her husband, and Tatum's Ocean Park Company, Defendants-Appellants.

The above and foregoing Assignments of Errors were presented to me with the entry of appeal this April 10, A. D. 1936.

LOUIE W. STRUM,
District Judge.

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347 On the 10th day of April, A. D. 1936, Appellants filed Motion, in the words and figures following, to-wit:

(Title Omitted.)

Now come the appellants and represent unto the Court that the Special Master's report of testimony

in this cause is partially in the form of questions and answers and that a clear conception of the testimony of the witnesses could not be properly had if the said testimony were reduced to narrative form, and that it would be impracticable to state said testimony in narrative form so as to enable the Appellate Court to properly weigh and consider the inferences that may be deduced therefrom.

The premises considered, the appellants move the Court to enter an order herein directing the Clerk to include the said testimony in the transcript of the record in the form of questions and answers as set forth in the Special Master's report thereof.

J. JULIEN SOUTHERLAND,
and
LOFTIN, STOKES & CALKINS,
By N. J. ROSENSTEIN,
Solicitors for Appellant, Ocean Beach Heights, Inc.

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348 On the 10th day of April, A. D. 1936, Appellants filed Motion in the words and figures following, to-wit:

MOTION FOR ENLARGEMENT OF TIME FOR FILING RECORD IN APPELLATE COURT.

(Title same as preceding paper.)

The Appellants respectfully represent unto the District Judge that the transcript of the record on the appeal in the above-entitled cause will consist of lengthy pleadings, a Master's report of the testimony and documentary evidence consisting of 100 pages, the

findings, opinions and the Final Decree of the District Court and the Appellants' proceedings to perfect the appeal herein, all of which the Appellants estimate will aggregate more than 200 type-written legal size pages, subsequently to be printed in accordance with the Rules of the United States Circuit Court of Appeals for the Fifth Circuit.

The premises considered, the Appellants move the District Judge to enter an order herein enlarging the time so as to allow 60 days' additional time from the return day of said appeal in which to docket the case and file the record thereof with the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, pursuant to Rule 16 of the said Circuit Court of Appeals.

J. JULIEN SOUTHERLAND,
and
LOFTIN, STOKES &
CALKINS,
By N. J. ROSENSTEIN,
Solicitors for Ocean Beach
Heights, Inc., Appellant.

On the 10th day of April, A. D. 1936, Order of Severance was entered, and, on said date was filed in the Clerk's office and recorded in Equity Order Book 3, Page 805, in the words and figures following, to-wit:

ORDER.

(Title same as preceding paper.)

This Cause came on to be heard upon the motion of the Defendants-Appellants, Ocean Beach Heights, Inc., a corporation, Normandy Beach Development Com-

pany, a corporation, Lucille F. Ensign and her husband, Walter C. Ensign, and Tatum's Ocean Park Company, a corporation, for an order of
349 severance and it appearing to the Court that service of process has not been had on the Defendants, North Island Investment Company, a Florida corporation, Creek Realty Company, a Florida corporation, Home Mortgage Company, a Michigan corporation, and Surf Hotel Corporation, a Florida corporation, and that the said Defendants have not appeared nor filed any pleadings in this cause; and that the defendants, Indian Creek Club, a corporation, D. Richard Mead as Trustee in Bankruptcy of Indian Creek Holding Company, E. B. Leatherman as Clerk of the Circuit Court of Dade County, Florida, Town of North Miami, a municipal corporation, Dana W. Robbins as Mayor of said Town, J. H. Gribble as Tax Collector and Tax Assessor of the said Town, Mrs. E. May Avil as Clerk and Treasurer of the said Town, and E. C. Harner, Mrs. Cecille Sevier, Mrs. Ella F. Klefeker, D. D. Avil and H. W. Jones as members of the Town Council of said Town, have declined to join in said appeal and have consented to a severance as to them; and that the said Defendants, Town of North Miami, a municipal corporation, Dana W. Robbins as Mayor of said Town, J. H. Gribble as Tax Collector and Tax Assessor of the said Town, Mrs. E. May Avil as Clerk and Treasurer of the said Town, and E. C. Harner, Mrs. Cecille Sevier, Mrs. Ella F. Klefeker, D. D. Avil and H. W. Jones as members of the Town Council of said Town, have requested to be aligned as parties appellee in the said appeal; and the Court being otherwise advised in the premises,

It is Ordered, Adjudged and Decreed that a severance be and the same is hereby granted to the said Defendants-Appellants, Ocean Beach Heights, Inc., a corporation, Normandy Beach Development Company, a corporation, Lucille F. Ensign and her husband,

Walter C. Ensign, and Tatum's Ocean Park Company, a corporation, as to their co-defendants, North Island Investment Company, a Florida corporation, Creek Realty Company, a Florida corporation, Home Mortgage Company, a Michigan corporation, Surf Hotel Corporation, a Florida corporation, Indian Creek Club, a corporation, D. Richard Mead as Trustee in Bankruptcy of Indian Creek Holding Company, E. B. Leatherman as Clerk of the Circuit Court of Dade County, Florida, Town of North Miami, a municipal corporation, Dana W. Robbins as Mayor of said Town, Mrs. E. May Avil as Clerk and Treasurer of the said Town, J. H. Gribble as Tax Collector and Tax Assessor of the said Town, and E. C. Harner, Mrs
350 Cecille Sevier, Mrs. Ella F. Klefeker, D. D. Avil and H. W. Jones as members of the Town Council of said Town, and that the said appeal shall proceed in the name of Ocean Beach Heights, Inc., a corporation, Normandy Beach Development Company, a corporation, Lucille F. Ensign and her husband, Walter C. Ensign, and Tatum's Ocean Park Company, a corporation, as Appellants against The Brown Crummer Investment Company, a Kansas corporation, and Town of North Miami, a municipal corporation, Dana W. Robbins as Mayor of said Town, J. H. Gribble as Tax Collector and Tax Assessor of the said Town, Mrs. E. May Avil as Clerk and Treasurer of the said Town, and E. C. Harner, Mrs. Cecille Sevier, Mrs. Ella F. Klefeker, D. D. Avil and H. W. Jones as members of the Town Council of said Town as Appellees.

Ordered and Done in Chambers at Miami, Florida this April 10, 1936.

LOUIE W. STRUM,
United States District Judge

On the 10th day of April, A. D. 1936, Order was entered, and on the same date, was filed in the Clerk's

office and recorded in Equity Order Book 3, Page 808 in the words and figures following, to-wit:

ORDER.

(Title same as preceding paper.)

This Cause came on to be heard upon the motion of Appellants for an order directing the Clerk to include the testimony in the transcript of the record in the form of questions and answers as set forth in the Special Master's report thereof, and the Court being advised in the premises,

It is Ordered that the Clerk of this Court be and he is hereby directed to include the testimony in the transcript of the record in the form of questions and answers as set forth in the Special Master's report thereof.

Ordered and Done at Miami, Florida, this April 10, A. D. 1936.

LOUIE W. STRUM,
District Judge.

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351 On the 10th day of April, A. D. 1936, Order Allowing Appeal and Fixing Cost Bond was entered, and was, on the same date, filed in the Clerk's office and recorded in Equity Order Book 3, Page 807, in the words and figures following, to-wit:

ORDER ALLOWING APPEAL AND FIXING COST BOND.

(Title Omitted.)

This Cause came on to be heard upon the Appellants' petition for appeal from the Final Decree in this cause,

entered on February 10, 1936, and from the Order overruling and denying Motions to Dismiss entered on April 25, 1935; and the Court having read the said petition and the Appellants having presented to the Court at the time of the filing of said petition their Assignments of Errors,

It is Ordered, Adjudged and Decreed that the said appeal be and the same is hereby allowed and that citation do issue to the Appellees above-named, returnable in the United States Circuit Court of Appeals for the Fifth Circuit 28 days from the date of the said citation;

It is Further Ordered, Adjudged and Decreed that this order shall become effective upon the Appellant, Ocean Beach Heights, Inc., a corporation, making and filing in this cause a cost in the principal sum of $250.00 with a surety company authorized to transact business in the State of Florida as surety; said bond to be made payable to the Appellees above-
352 named, conditioned that the said Appellant, Ocean Beach Heights, Inc., shall pay all the costs awarded or decreed against the Appellants by the Court in the said above-described appeal; said bond to be approved by a Judge or by the Clerk of this Court.

Ordered and Done at Miami, Florida, this April 10, A. D. 1936.

LOUIE W. STRUM,
District Judge.

On the 10th day of April, A. D. 1936, Cost Bond was filed, in the words and figures following, to-wit:

COST BOND.

(Title same as preceding paper.)

Know all Men by these Presents:

That the Ocean Beach Heights, Inc., a corporation, as Principal, and Maryland Casualty Company, a Maryland corporation, a surety company authorized to transact business in the State of Florida, as Surety, are held and firmly bound and obliged unto The Brown Crummer Investment Company, a Kansas corporation, Town of North Miami, a municipal corporation, Dana W. Robbins as Mayor of said Town, J. H. Gribble as Tax Collector and Tax Assessor of said Town, Mrs. E. May Avil as Clerk and Treasurer of said Town, and E. C. Harner, Mrs. Cecille Sevier, Mrs. Ella F. Klefeker, D. D. Avil and H. W. Jones as members of the Town Council of said Town, in the full and just sum of Two Hundred Fifty Dollars ($250.00) to be paid unto the said The Brown Crummer Investment Company, a Kansas corporation, Town of North Miami, a municipal corporation, Dana W. Robbins as Mayor of said Town, J. H. Gribble as Tax Collector and Tax Assessor of said Town, Mrs. E. May Avil as Clerk and Treasurer of said Town, and E. C. Harner, Mrs. Cecille Sevier, Mrs. Ella F. Klefeker, D. D. Avil and H. W. Jones as members of the Town Council of said Town, to the which payment well and truly to be paid the said Ocean Beach Heights, Inc., a corporation, does bind itself firmly by these presents, as well as does the said Maryland Casualty Company.

The condition of this obligation is such that whereas the said Ocean Beach Heights, Inc., a corporation,

Normandy Beach Development Company, a corporation, Lucille F. Ensign and her husband,
353 Walter C. Ensign, and Tatum's Ocean Park Company, a corporation, were allowed an appeal to the Circuit Court of Appeals for the Fifth Circuit to review the Final Decree and Order overruling and denying the Motions to Dismiss in the above entitled cause;

Now, Therefore, if the said Ocean Beach Heights, Inc., shall pay all the costs awarded or decreed against Ocean Beach Heights, Inc., a corporation, Normandy Beach Development Company, a corporation, Lucille F. Ensign and her husband, Walter C. Ensign, and Tatum's Ocean Park Company, a corporation, by the Court in the said above described appeal, then this obligation shall be void.

Signed and Sealed this April 10, A. D. 1936.

OCEAN BEACH HEIGHTS, INC.,
(Corporate Seal)
By J. JULIEN SOUTHERLAND,
Secretary.

MARYLAND CASUALTY COMPANY,
By GEO. C. WHITE,
(Corporate Seal)
Attorney in Fact.

The foregoing bond is taken, approved and accepted this April 10, A. D. 1936.

LOUIE W. STRUM,
U. S. District Judge.

On the 10th day of April, A. D. 1936, Order enlarging Time for filing Record in Appellate Court was entered, and, on the same date, was filed in the Clerk's

office and recorded in Equity Order Book 3, Page 809, in the words and figures following, to-wit:

ORDER ENLARGING TIME FOR FILING RECORD IN APPELLATE COURT.

(Title Omitted.)

This Cause came on to be heard on the Appellants' motion for an order enlarging the time in which to docket and file the record in the United States Circuit Court of Appeals for the Fifth Circuit, pursuant to the appeal herein, and good cause having been shown that such an order should be granted,

It is, Thereupon, Ordered, Adjudged and Decreed that the time be and the same is hereby enlarged so as to allow 60 days' additional time from
354 the return day of said appeal in which to docket the case and file the record thereof with the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, pursuant to Rule 16 of the said Circuit Court of Appeals.

Ordered and Done at Miami, Florida, this April 10, 1936.

LOUIE W. STRUM,
District Judge.

Attest, A true Copy.

EDWIN R. WILLIAMS,
Clerk, U. S. District Court,
(District Court Seal) Southern District of Florida,
By ANNA M. FITZSIMMONS,
Deputy Clerk.

Rec. Eq. Or. Bk. 3, Page 809. Org. mailed Circuit Court of Appeals.

355 On the 17th day of April, A. D. 1936, Appellants filed Directions for preparation of a transcript of the record, in the words and figures following, to-wit:

DIRECTIONS TO THE CLERK FOR PREPARATION OF A TRANSCRIPT OF THE RECORD.

(Title Omitted.)

The Clerk will begin the preparation of a transcript of the record in the above-entitled cause on May 4, 1936, and will make up said transcript of the record in accordance with the following directions:

1. Recite the filing of the Bill of Complaint and copy the same in full.

2. Recite the issuance of the Subpoena in Equity, dated December 1, 1934, and recite the service thereof and the filing thereof.

356 3. Recite the filing of the Answer of Town of North Miami, et al., filed December 29, 1934, and copy the same in full.

4. Recite the issuance of the subpoena in Equity, dated January 21, 1935, and recite the service thereof and the filing thereof.

4. Recite the filing of the Answer of E. B. Leatherman, as Clerk of the Circuit Court of Dade County, Florida.

5. Recite the filing of the Motion to Dismiss filed by Tatum's Ocean Park Company on February 11, 1935, and copy the same in full.

6. Recite the filing of the Motion to Dismiss filed by Lucille F. Ensign and Walter C. Ensign on February 11, 1935, and copy the same in full.

7. Recite the filing of the Motion to Dismiss filed by Normandy Beach Development Company on February 11, 1935, and copy the same in full.

8. Recite the entry, filing and recordation of the Order enlarging the time to February 22, 1935, for the filing of pleadings by Ocean Beach Heights, Inc.

9. Recite the filing of the Motion to Dismiss filed by Ocean Beach Heights, Inc., on February 21, 1935, and copy the same in full.

10. Recite the entry, filing and recordation of the Order denying the Motions to Dismiss, and copy said Order in full.

11. Recite the filing of the Opinion of the Court, filed April 26, 1935, on the Motions to Dismiss, and copy said Opinion in full.

12. Recite the filing of the Answer of Ocean Beach Heights, Inc., and copy the same in full, including all exhibits attached thereto; including photostatic copies of the maps attached thereto.

13. Recite the filing of the Stipulation as to Normandy Beach Development Company, filed June 7, 1935, and copy the same in full.

14. Recite the filing of the Answer of Normandy Beach Development Company, filed June 7, 1935, and copy the same in full.

15. Recite the filing of the Motion for Order of Reference, filed July 19, 1935, and copy the same in full.

16. Recite the entry, filing and recordation of the Order of Reference, and copy said Order in full.

357 17. Recite the filing before the Master of the Stipulation, dated July 22, 1935, as to the evidence to be included in the Master's Report, and copy the said Stipulation in full.

18. Recite the filing of the Special Master's Report of the evidence, and copy said Report in full; and copy in full all documentary evidence made a part of said Master's Report by the Stipulation, dated July 22, 1935, and referred to in Item No. 17 of these directions. Insert in the transcript photostatic copies of all maps filed in evidence.

19. Recite the filing of the Master's Report of his findings, and copy the same in full.

20. Recite the filing of the Master's Notice of Filing his Report, and copy said Notice in full.

21. Recite the filing of Exceptions to the Master's Report filed by Ocean Beach Heights, Inc., on October 23, 1935, and copy said Exceptions in full.

22. Recite the filing of the District Judge's Findings of Fact and Conclusions of Law, filed February 10, 1936, and copy the same in full.

23. Recite the entry, filing and recordation of the Final Decree, and copy the same in full.

24. Recite the filing of the Clerk's Certificate, filed April 7, 1936, and copy the same in full.

25. Recite the filing of Notice of Severance and Invitation to Join in the Appeal, filed April 6, 1936, and copy the same in full.

26. Recite the filing of Motion for Order of Severance, filed April 6, 1936, and copy the same in full.

27. Recite the filing of the Petition for Appeal, filed April 10, 1936, and copy the same in full.

28. Recite the filing of the Assignments of Errors, filed April 10, 1936, and copy the same in full.

29. Recite the filing of the Motion for Order requiring testimony to be stated in the form of questions and answers, and copy said Motion in full.

30. Recite the filing of Motion for enlargement of time for filing record in Appellate Court, and copy said Motion in full.

358 31. Recite the entry, filing and recordation of the Order of Severance, filed April 10, 1936, and copy the same in full.

32. Recite the entry, filing and recordation of the Order requiring the testimony to be copied in the form of questions and answers, and copy said Order in full.

33. Recite the entry, filing and recordation of the Order Allowing Appeal and Fixing Cost Bond, and copy said Order in full.

34. Recite the filing of the Cost Bond, and copy the same in full.

35. Recite the entry, filing and recordation of the Order enlarging the time for filing the record in Appellate Court, and copy said Order in full.

36. Recite the issuance, service and filing of the Citation, and copy the same in full.

37. Recite the filing of these Directions, and copy the same in full.

38. Recite the filing of any Additional Directions, and copy the same in full.

39. Append to the Transcript of the Record the Certificate of the Clerk certifying the correctness of the said Transcript of the Record.

40. Append to the Transcript of the Record the Certificate of the Clerk that the Appellants have paid the Clerk's costs for the Transcript of the Record.

J. JULIEN SOUTHERLAND,
and
LOFTIN, STOKES &
CALKINS,
By JNO. P. STOKES,
Solicitors for Ocean Beach Heights, Inc., Appellant.
HENRY K. GIBSON,
Solicitor for Normandy Beach Development Company, Lucille F. Ensign and her husband, Walter C. Ensign, and Tatum's Ocean Park Company, Appellants.

State of Florida,
Dade County.

Before me, the undersigned authority, this day personally appeared Fred P. Fenno who, being by me first duly sworn, says: That he is employed in the
359 office of Loftin, Stokes & Calkins, Solicitors for the Appellant, Ocean Beach Heights, Inc., in the above-entitled cause; that on the 16th day of April, A. D. 1936, at the hour of 5:30 o'clock P. M., he did mail to Giles J. Patterson, Solicitor for the Appellee, The Brown Crummer Investment Company,

in the above-entitled cause, a copy of the following papers filed in the above-entitled cause, to-wit:

Notice of Severance and Invitation to Join in the Appeal; Order Granting Severance; Certificate of Clerk, dated April 7, 1936; Order directing Clerk to include testimony in the transcript of the record in the form of questions and answers as set forth in Special Master's Report thereof; Order Enlarging Time for Filing Record in Appellate Court; Petition for Appeal; Order Allowing Appeal and Fixing Cost Bond; Cost Bond; Assignments of Errors; Directions to Clerk for preparation of a transcript of the record, by placing the same in an envelope bearing the requisite amount of United States uncanceled stamps, addressed as follows:

Mr. Giles J. Patterson,
Attorney-at-law,
Florida National Bank Building,
Jacksonville, Florida,

and by depositing the said envelope, properly sealed, stamped and addressed, as aforesaid, in the United States Post Office at Miami, Dade County, Florida.

FRED P. FENNO.

Subscribed and sworn to before me this 16th day of April, A. D. 1936.

MAY DUNPHY,
(Notarial Seal) Notary Public, State of Florida.

My commission expires June 11, 1937.

We Hereby Acknowledge Receipt of a copy of the foregoing Directions to the Clerk for the preparation of a transcript of the record in the above-entitled cause,

together with a copy of the Assignments of Errors, Petition for Appeal, Order allowing Appeal and Fixing Cost Bond, Cost Bond, Order enlarging time for filing record in Appellate Court, Order directing Clerk to include testimony in the transcript of the record in the form of questions and answers as set forth
360 in Special Master's report thereof, Certificate of Clerk, dated April 7, 1936, Order granting severance, in the above-entitled cause this April 17th, 1936.

PATTERSON, BLACKWELL & KNIGHT,
By T. J. BLACKWELL,
Solicitor for Appellees, Town of North Miami, a municipal corporation, Dana W. Robbins as Mayor said Town, J. H. Gribble as Tax Collector and Tax Assessor of the said Town; Mrs. E. May Avil as Clerk and Treasurer of said Town; and E. C. Harner, Mrs. Cecille Sevier, Mrs. Ella E. Klefeker, D. D. Avil and H. W. Jones as members of the Town Council of said Town.

On the 27th day of May, A. D. 1936, Order Certifying Original Exhibits to Appellate Court was entered, filed and recorded in Equity Order Book 3 at Page 818, in the words and figures following, to-wit:

(Title Omitted.)

Upon application of Loftin, Stokes & Calkins, of Counsel for the Appellant, Ocean Beach Heights, Inc.,

in the above entitled cause, this matter was heard for the purpose of completing the transcript of the record for use on the appeal heretofore entered in this cause;

This Court is of the opinion that it is necessary and proper that the original portions of certain newspapers, the Miami Herald, of January 14, 1929, marked "Plaintiff's Exhibit No. 16," and the Miami Herald, of June 27, 1926, marked "Plaintiff's Exhibit No. 3," should be inspected in the United States Circuit Court of Appeals for the Fifth Circuit upon the said appeal;

It is, Therefore, Ordered that the Clerk of this Court shall safely keep the said original exhibits until the transcript of the record is forwarded to said Appellate Court, and thereupon, shall attach his authentication certificate to each of said original exhibits and send the same, by United States Mail, to the Clerk of the said Appellate Court, at New Orleans, Louisiana; the said original exhibits to be returned to the Clerk of this Court upon final disposition of the said appeal in the said Appellate Court.

It is Further Ordered that this order be copied in full in the transcript of the record on said appeal.

361 Ordered and Done at Miami, Florida, this May 27, 1936.

ALEXANDER AKERMAN,
United States District Judge

362 I, EDWIN R. WILLIAMS, as Clerk of the United States District Court for the Southern District of Florida, do hereby certify that the foregoing pages numbered 1 to 361, both inclusive, contain a correct transcript of the record of the Judgment, and a true and correct recital and copy of all papers, proceedings and indorsements, including the assignments of errors, opinions of the District Court, Cost Bond, and including the directions of the parties indicating the portions of the record to be copied into said transcript and the portions to be omitted from said transcript, in the case of The Brown Crummer Investment Company, a Kansas corporation, Plaintiff, vs. Town of North Miami, a municipal corporation, Dana W. Robbins, as Mayor of said Town, J. H. Gribble, as Tax Collector and Tax Assessor of said Town, Mrs. E. May Avil as Clerk and Treasurer of said Town, and E. C. Harner, Mrs. Cecille Sevier, Mrs. Ella F. Klefeker, D. D. Avil and H. W. Jones, as members of the Town Council of said Town, and Ocean Beach Heights, Inc., a corporation, Normandy Beach Development Company, a corporation, Lucille F. Ensign and her husband, Walter C. Ensign, and Tatum's Ocean Park Company, a corporation, et al., Defendants, said case being numbered 1248-M-Equity.

In Testimony Whereof, I have hereunto set my hand and the Seal of said District Court, at Miami, Florida, this June 19th, 1936.

EDWIN R. WILLIAMS,
(Seal) As Clerk of the United States District Court for the Southern District of Florida,
By EARLE F. SPRIGG,
Deputy Clerk.

I do Further Certify that the costs of the foregoing Transcript of the Record have been paid by the Appellant, Ocean Beach Heights, Inc.

In Testimony Whereof, I have hereunto set my hand and the Seal of said District Court, at Miami, Florida, this June 19th, 1936.

EDWIN R. WILLIAMS,
(Seal) As Clerk of the United States District Court for the Southern District of Florida,
By EARLE F. SPRIGG,
Deputy Clerk.

Citation omitted from the printed record, the original thereof being on file in the office of the Clerk of the U. S. Circuit Court of Appeals.

* * * * * * * *

[fol. 429] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of January 6th, 1937

No. 8150

OCEAN BEACH HEIGHTS, INC., et al.,

versus

BROWN CRUMMER INVESTMENT COMPANY et al.

On this day this cause was called, and, after argument by Jno. P. Stokes, Esq., and J. Julian Southerland, Esq., for appellants, and Giles J. Patterson, Esq., for appellees, was submitted to the Court.

[fol. 430] OPINION OF THE COURT AND DISSENTING OPINION OF SIBLEY, CIRCUIT JUDGE—Filed January 22, 1937.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 8150

OCEAN BEACH HEIGHTS, INC., et al., Appellants,

versus

BROWN CRUMMER INVESTMENT COMPANY et al., Appellees

Appeal from the District Court of the United States for the Southern District of Florida

(January 22, 1937)

Before Foster, Sibley and Hutcheson, Circuit Judges

HUTCHESON, Circuit Judge:

This is another case involving public obligations in which the difference between the promise and the ability to pay them is acutely presented as the result of a claim of non-

liability asserted by territories which, after the issuance and sale of the bonds, was excluded from the Town of Miami Shores in ouster proceedings.[1] The suit in support of a judgment in mandamus proceedings the bondholders had obtained against the Town, was for injunction to prevent [fol. 431] the property owners in the excluded territory from asserting the ouster judgment against, or otherwise interfering with, tax levies on their property for the bonds. Appellees prevailed below on the ground that, as to the lands in controversy, the Town was a de facto corporation when the bonds were issued and validated; that the ouster proceedings spoke only for the future; it did not, it could not, affect bondholders who were not parties to it or bonds whose issuance or validity was not the subject of it.

Appellants insist that, whatever might be the effect of the ouster judgment standing alone, it does not stand alone here. It has been supplemented, they say its effect heightened and made completely comprehensive by the later judgment in the equity suit of Leatherman v. Alta Cliff, 153 So. 845, enjoining the issuance of tax deeds to property in the excluded territory. And more in that suit the Supreme Court declared that, as to the territory excluded, the Town had never had either de jure or de facto existence. Appellees reply that they were parties to neither of these suits; they are not bound by the judgments in them. They point out that the Leatherman decision was based on the ouster suit. They insist that the expression in the opinion in the Leatherman case, "The ouster of jurisdiction was necessarily based upon the finding and adjudication that there had never been any authority in law for the inclusion of the territory east of Biscayne Bay within the corporate limits of the town of Miami Shores, and, if there had never been any lawful authority for the inclusion of that territory within the municipality, then the municipality never acquired any de facto or de jure jurisdiction over the lands embraced in that territory," was not necessary to the decision, nor was it correct as a general statement of law. They urge upon us that, in the inquiry of ouster, the only question for decision was de jure existence; it was not, it could not, have [fol. 432] been decided in that case whether there was a corporation de facto, for no such question was for decision

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[1] Mahood vs. State, 133 So. 90.

in it. Appellants' brief is largely taken up with citation and discussion of authority on the point that federal courts will follow the construction the highest court of the state gives to its statutes. They argue that the Supreme Court of the state, having declared that, as to the excluded territory, the Town never had either de jure or de facto existence, the federal courts must, in a suit on the bonds, hold that though the bonds were, in fact, issued by the Town as obligations on the whole of its territory as its boundaries were originally constituted, they are not obligations in law on the excluded territory. We agree with appellees that the judgment in the ouster suit spoke only as to the future, determined only that from and after the ouster the Town did not exist de jure in the excluded territory. We agree with them, too, that, while the judgment in that proceeding prevented the Town from imposing any new obligations on and from exercising any further general jurisdiction over it, as a judgment it was without effect upon obligations already fixed and existing against that territory. State ex rel Fidelity Life Association v. Cedar Key, 165 So. 672; State v. Coral Gables, 163 So. 308; Sparks v. Ewing, 163 So. 112; City of Winter Park v. Dunblaine, 164 So. 366; Payne v. First National Bank, 291 S. W. 209; Mobile v. Watson, 116 U. S. 289; Shapleigh v. San Angelo, 167 U. S. 646; City of Winterhaven v. Gillespie, 84 Fed. (2) 285. We particularly agree with appellees that it is for this court to determine whether the whole facts in evidence, the acts creating the Town, the issuance of the bonds, their validation by court decree under the Florida statute, the conduct of persons in the affected territory, and of the officers of the Town toward that territory, support the findings of the court below, that, as to the bonds and the territory in question, a case was made out of a town existing de facto, which was authorized to, and did, issue bonds under circumstances [fol. 433] which made them binding obligations on that territory. It is for this court to say whether contrary to the findings of the district Judge, the facts shown of record make out a case of bonds issued in circumstances such that, as to the territory in question, it must be said that it was never even de facto a part of the Town, the bonds as to it never had binding force. It is argued by appellants that there is no attack here upon the validity of the bonds, none upon that of the Town as a town. The corporation has a

de jure existence; the bonds are valid; and the authorities cited above, holding territory which has had a de facto existence as a municipality, to liability for bonds created while it was so acting, have no application here. The bonds in question here, they say, are still obligations of a still existing town. Let the bondholders look to the town. But this simple solution, we think, is not either a just or a legal one. By the undisputed evidence it is made to appear that, though the territory from which the corporation was ousted was only a small part of the whole territory of the Town, as its bounds were defined in creating it, its value was, and is, greatly in excess of that of all of the other property in the Town combined, and that, if it is relieved from liability on the bonds, the remaining territory will not only be wholly inadequate to service them, but such a burden will be thrown upon it as to be intolerable. Under these circumstances, we think the same question is presented as to the liability of territory excluded from a municipality in ouster proceedings as is presented when a municipality is ousted from jurisdiction over all of its territory, is declared non-existent as to all. If then, it would have been possible in law for the territory in question to have been incorporated into a municipality, and if by compliance with all required forms there was a real appearance, though not the substance, of the fact, that it had actually been so incorporated, we think [fol. 434] that, as to bonds issued under the forms of Florida law and validated under the provision of its statutes, the territory, though excluded by the ouster as to the future from the general jurisdiction of the Town, remains a part of it for the purpose of servicing and discharging the bonds. Authorities, supra, and City of Decatur v. Thames, 84 Fed. (2) 105. It is without dispute in the evidence that, from the time of its formation until the ouster proceeding, the Town exerted jurisdiction over the whole territory. It levied and collected taxes from it. It was understood by all concerned that it extended over it. It did, in fact, though not in law, so extend. The Town was created under the general laws of Florida. At the time of its organization, by Florida law the jurisdiction of all cities and towns organized under the general law extended to and over the waters of all rivers, creeks, harbors, and bays contained within their corporate limits. Accordingly, when the incorporators set about to create this town they thought they had a right to include, they did include in it, as a part of

the corporate area, parts of several bodies of water, the upper reaches of Biscayne Bay and the canal flowing into it, Arch Creek, and other canals. It is true that practically all of the improvements and nearly all of the population were on the west side of the bay, the land in controversy on the east side. It is true, too, though, that the call for the election was regularly made, the proposed corporate limits as set out in the notice for the election and in the bonds as fixed in forming the Town, definitely included that east of the bay. Incorporation was duly voted, the Town, with its definitely described limits, was begun, and, from then on, jurisdiction was exercised without discrimination throughout the limits as they had been set out. The bond issues for improvements, a small part of the proceeds of which were spent east of the Bay, were duly authorized, duly validated, duly issued, and duly sold. While it is true [fol. 435] that there were only a few persons living on the east side of the Bay, it is true, too, that the property there, ocean front property considered greatly valuable for speculative purposes, was all laid out into lots and blocks, and streets were run through it. The record leaves no doubt, too, that in the halcyon days of 1926 before the golden bubble burst, with the exception of perhaps one of the complainants, every one was well pleased to be a part of the new town, partly because the property thus escaped being taken into the City of Miami and subjected to its greatly heavier taxes, and partly because with a causeway over the Bay under construction, and the boom complex on town lots in control, the inclusion in a town was felt to be a good thing. We do not think, in view of these facts, that it can be said that the Town did not have a de facto existence east of the Bay sufficient to support the obligation of the bonds issued on the faith of its existence there as a town.

The Supreme Court of Florida correctly held, of course, that the statute under which the Town was incorporated was one for self incorporation and not for the conquest of territory. It was not intended to authorize persons constituting a community to reach out and take into a proposed corporation territory other than that already constituting the hamlet or village to be incorporated. The act, in short, authorized localities having a community status as a village or town to take on corporate status as such. We think it clear then that if, as a matter of fact, as was found in the ouster case, while the property east of the Bay was embraced

within the corporate limits, it was not prior to the incorporation a part of the settlement or community incorporated, it could not by the acts done have been made a part of it de jure. But we are not prepared to hold, we do not hold, that as to persons dealing with the municipality, as it was constituted on paper if not on the ground, and buying its bonds [fol. 436] in good faith, the territory in question was not de facto a part of the Town. The Supreme Court of Florida has not held in the cases cited that if, as a matter of fact, the territory on both sides of the Bay was a part of the hamlet before it was incorporated, it could not be incorporated as a town. Indeed, in the Mahood case, it decided the contrary of this. It definitely held that whether the affected territory was or was not a part of the Town, was to be determined as an issue of fact and not of law. It reversed the judgment of ouster, saying:

"We could affirm the judgment of ouster were it not for the fact that the answer alleges, 'It is denied that said territory is not a part of the community of Miami Shores, and that it is far removed and isolated from the community.' This allegation traverses the allegation of the information to the effect that the territory sought to be affected by the information was not a part of the community of Miami Shores. This presents a question of fact which the respondents are entitled to have tried by a jury, and, until the truth in regard to that fact has been ascertained, it is not needful to discuss other questions raised by the pleadings." p. 91-2.

It pointed out that there was no constitutional inhibition against the Town's existence on both sides of the Bay, saying they were not prepared to hold that the Legislature could not have so spread the limits of the town. Finally, it said:

"The pleadings all admit that there was a village known as Miami Shores and that the inhabitants of the village proceeded to the organization of a municipal corporation. The question of fact to be determined is whether or not that village had its existence and its location in whole or [fol. 437] in part on the lands east of the middle of Biscayne Bay". p. 92.

It being clear then that the difficulty in the incorporation of the Town so as to include the territory in question arises

not out of any constitutional prohibition but out of the fact that it was found not to have been a part of the settlement before the Town's incorporation, we think it plain that, under the facts as they appear in the record, of a good faith attempt at incorporation, of user of, and acquiescence in the exercise of corporate power, a de facto corporation was created as to the territory east of the Bay, and that it is bound for the payment of the bonds in question. The decree then was right in enjoining interference with the town authorities in their levying, assessing, and collecting taxes to comply with the judgment which had been entered against them in the mandamus proceeding directing them to do so. It is Affirmed.

SIBLEY, Circuit Judge, Dissenting:

The decree about to be affirmed is, I think, grossly inequitable in its distribution of the burden of the bonded debt of $238,000. Its effect is to make persons owning the property east of Biscayne Bay and not within the town pay about two-thirds of this debt although the bond money was expended almost wholly for permanent improvements within the town on the west side of the Bay. It is just [fol. 438] that the bondholders have their money; but not just that the most of it should come from property east of the Bay and from persons who were not active in issuing the bonds or misstating the town limits, because the territory and the inhabitants west of the Bay, constituting the real town, got and retained all the benefits but are to pay relatively little.

The evidence is undisputed that in March, 1926, about 2500 persons lived in a community west of Biscayne Bay to the north of the City of Miami, while three or four miles across the Bay and between it and the ocean lay about two square miles of vacant but valuable land partly plotted into streets and lots but mostly in mangrove swamps, there being thereon but ten dwelling houses, some of them occupied only in winter, and but twelve inhabitants. Under the Florida statute for the self-incorporation of a "hamlet or village", the west-siders called a meeting attended by about one hundred persons, of whom thirty-eight were qualified voters, no east-sider appearing to have been present, and the thirty-eight voted into existence a town which should include both the east and the west side territory. A causeway across

the Bay was about to be constructed, apparently as a private enterprise, but a hurricane destroyed its beginnings in 1926 and it was never built, so that one on the east side in order to reach the west side settlement otherwise than by boat must go ten miles. The town officers, always west-siders, in 1927 and 1928 issued the town's bonds, $69,000 expressly for streets and sidewalks, and $169,000 for general purposes, and spent the whole for streets, sidewalks, a town hall, a sewerage system, waterworks, fire wells and garbage trucks, all on the west side save that $6,000 was spent for mosquito eradication on the east side; the greater part of that, however, being an investment in equipment still owned by the town. The town undertook on the east [fol. 439] side some garbage removal, some road repair work and some police protection, but afforded neither water nor fire protection, nor sewerage nor lights. Some taxes were paid from the east side, but most of them were defaulted. Some property owners there made no protests against the town's activities, but others did. One large landowner, a defendant here, resisted always and by litigation. In August, 1929, that landowner and three others joined the State of Florida, acting through the Attorney General, in filing a quo warranto against the town. After a decisive opinion from the State Supreme Court, Mahood vs. State ex rel Davis, 101 Fla. 1254, 133 So. 90, that the statute of Florida allowing the self-incorporation of a hamlet or village did not authorize the inclusion of land across miles of navigable water, the town authority was ousted from the east side on Dec. 18, 1931. Several of the property owners, defendants here, obtained under another judgment of the Supreme Court, Leatherman vs. Alta Cliff Co., 114 Fla. 305, 153 So. 845, a cancellation of the tax certificates previously issued by the town against their property. The Supreme Court of Florida many years before had construed the statute and held that it did not authorize the inclusion of any but land contiguous to the village or hamlet. Town of Enterprise vs. State, 29 Fla. 128, 10 So. 740.

When in 1926 the west-siders undertook what they did both they and the bond buying public should have known that there was no warrant of law for including the land on the east side of the Bay. Although the bondholder, complainant here, being no party to the above recited litigations before the Supreme Court of Florida is under no adjudica-

tion binding on him, nevertheless the decisions are conclusive in this court on the construction of the Florida statute. In other words, the law in this case is against him.

So are the equities. The bond money produced streets and [fol. 440] sidewalks, a town hall, a waterworks, sewerage and fire protection system wholly on the west side. The mosquito eradication on the east side was probably only a temporary benefit. The lawful town and not the east-siders got the permanent benefit of the whole expenditure. The east-siders may have acquiesced as far as they did because of the general benefit to them of being in the town. The State of Florida by quo warranto excluded them from the town in December, 1931. Since then they could have no police protection or garbage service or street repairs, nor any hope of waterworks, street and sidewalk construction or other town benefits which would have been due them. All consideration for identifying themselves with the town then failed. They got nothing and can get nothing from it. It is not shown that they have estopped themselves to set up their legal rights. Estoppel is personal, not territorial. No east-sider, much less one with which any defendant is shown to be in privity, has been proven to have participated in the false delimitation of the town, or in the issuance, validation or sale of the bonds, or to have said or done anything to mislead the bond buyers. There is indeed no particle of evidence that any bond buyer was ever misled. The bonds have no recital of the town's boundaries in them. The buyers may not have investigated the boundaries at all, or they may have known, as indeed they were bound to know, that the Florida statutes did not allow noncontiguous land to be taken into a self-incorporated town.

If we take the view that the bondholders were not bound thus to know the law, and that all the east side property holders were acquiescent in being in the town and in floating the bonds, nevertheless the State of Florida has put them out. The de facto town has ceased to be. An unexpected situation has arisen. The east side having been divorced from the benefits of the bond expenditures and [fol. 441] from all benefit of being in the town, some basis of prorating the indebtedness which takes cognizance of the distribution of the bond benefits would be equitable. I see no fairness in letting this town's officers, in whose selection the east-siders have no voice, value and assess the

property of the east side just as though the east side had gotten as many water mains, sewers, streets and sidewalks, public buildings and vehicles as the west side has gotten. A practical formula would be to treat the ouster as a separation of two territories, and to value as of that date the permanent bond improvements retained on the west side, and charge that value wholly to the west side; the balance of the bond debt being left as the joint burden of both sides. If on a fair proration taxes would be high on the west siders, they have no one but themselves to blame. The complaining bondholder should not have the decree he has gotten.

[fol. 442] JUDGMENT

Extract from the Minutes of January 22d, 1937

No. 8150

OCEAN BEACH HEIGHTS, INC., et al.,

versus

BROWN CRUMMER INVESTMENT COMPANY et al.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellants, Ocean Beach Heights, Inc., and others, and the surety on the appeal bond herein, Maryland Casualty Company, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

"Sibley, Circuit Judge, dissenting."

PAGES SKIP

FROM 438 TO 447

[fol. 450] ORDER DENYING REHEARING

Extract from the Minutes of February 5th, 1937

No. 8150

OCEAN BEACH HEIGHTS, INC., et al.,

versus

BROWN CRUMMER INVESTMENT COMPANY et al.

As neither of the judges who concurred in the judgment of the court in the above numbered and entitled cause is of opinion that the petition for rehearing should be granted, it is ordered that the said petition be and the same hereby is Denied.

[fol. 451] MOTION AND ORDER STAYING MANDATE—Filed February 16th, 1937

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 8150

OCEAN BEACH HEIGHTS, INC., et al., Appellants,

vs.

THE BROWN CRUMMER INVESTMENT COMPANY et al., Appellees

Appeal from the District Court of the United States for the Southern District of Florida

Motion to Stay Issuance of Mandate

The appellants, Ocean Beach Heights, Inc., a corporation, Normandy Beach Development Company, a corporation, Lucille F. Ensign and her husband, Walter C. Ensign, and Tatum's Ocean Park Company, a corporation, represent to the Court that they have in the course of preparation a petition to the Supreme Court of the United States for the

issuance of a writ of certiorari directed to this Court, to review the final decision of this Court, rendered January 22, 1937, affirming the decree of the District Court of the United States for the Southern District of Florida, and that they are now ready to proceed with the presentation of the said petition to the Supreme Court of the United States with all possible dispatch.

[fol. 452] The premises considered, the petitioners move the Court to stay the issuance of a mandate from this court to the District Court of the United States for the Southern District of Florida pending the presentation and consideration by the Supreme Court of the United States of petitioners' application for review on certiorari.

(Signed) Henry K. Gibson, J. Julien Southerland, Scott M. Loftin, James E. Calkins, Jno. P. Stokes, Solicitors for the Appellants. Loftin, Stokes & Calkins, 627 Ingraham Bldg., Miami, Florida.

[fol. 453] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 8150

OCEAN BEACH HEIGHTS, INC., et al., Appellants,

versus

BROWN CRUMMER INVESTMENT COMPANY et al., Appellees

On Consideration of the Application of the Appellants in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Appellants to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition and record have been filed and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the

filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 16th day of February, 1937.

(Signed) Rufus E. Foster, United States Circuit Judge.

[fol. 454] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 429 to 453 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 8150, wherein Ocean Beach Heights, Inc., et al., are appellants, and Brown Crummer Investment Company, et al., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 428 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 16th day of February, A. D. 1937.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 455] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 12, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. [redacted] 10

OCEAN BEACH HEIGHTS, INC., A CORPORATION; NORMANDY BEACH DEVELOPMENT COMPANY, A CORPORATION; LUCILLE F. ENSIGN AND HER HUSBAND, WALTER C. ENSIGN, AND TATUM'S OCEAN PARK COMPANY, A CORPORATION,

Petitioners,

vs.

THE BROWN-CRUMMER INVESTMENT COMPANY, A KANSAS CORPORATION, AND TOWN OF NORTH MIAMI, A MUNICIPAL CORPORATION; DANA W. ROBBINS AS MAYOR OF SAID TOWN, J. H. GRIBBLE AS TAX COLLECTOR AND TAX ASSESSOR OF THE SAID TOWN, MRS. E. MAY AVIL AS CLERK AND TREASURER OF THE SAID TOWN, AND E. C. HARNER, MRS. CECILLE SEVIER, MRS. ELLA F. KLEFEKER, D. D. AVIL AND H. W. JONES AS MEMBERS OF THE TOWN COUNCIL OF SAID TOWN.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

J. JULIEN SOUTHERLAND,
Miami Beach, Florida,
LOFTIN, STOKES & CALKINS,
Miami, Florida,
Counsel for Ocean Beach Heights, Inc.
HENRY K. GIBSON,
Miami, Florida,
Counsel for The Normandy Beach Development Company, Lucille F. Ensign and Walter C. Ensign, and Tatum's Ocean Park Company.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 787

OCEAN BEACH HEIGHTS, INC., A CORPORATION; NORMANDY BEACH DEVELOPMENT COMPANY, A CORPORATION; LUCILLE F. ENSIGN AND HER HUSBAND, WALTER C. ENSIGN, AND TATUM'S OCEAN PARK COMPANY, A CORPORATION,

Petitioners,

vs.

THE BROWN-CRUMMER INVESTMENT COMPANY, A KANSAS CORPORATION, AND TOWN OF NORTH MIAMI, A MUNICIPAL CORPORATION; DANA W. ROBBINS AS MAYOR OF SAID TOWN, J. H. GRIBBLE AS TAX COLLECTOR AND TAX ASSESSOR OF THE SAID TOWN, MRS. E. MAY AVIL AS CLERK AND TREASURER OF THE SAID TOWN, AND E. C. HARNER, MRS. CECILLE SEVIER, MRS. ELLA F. KLEFEKER, D. D. AVIL AND H. W. JONES AS MEMBERS OF THE TOWN COUNCIL OF SAID TOWN.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

The Honorable the Supreme Court of the United States:

The petitioners respectfully show:

This is a petition for review on certiorari of the final decree of the Circuit Court of Appeals for the Fifth Judicial Circuit, of January 22, 1937 (not yet reported), whereby,

by a divided court, the final decree rendered by District Judge Halsted L. Ritter, Southern District of Florida, at Miami, on February 10, 1936 (R. 390), was affirmed; and for review of the decree of the Circuit Court of Appeals, of February 5, 1937; denying a petition for rehearing.

On June 19, 1931, The Brown-Crummer Investment Company recovered in the District Court a common law judgment against the Town of North Miami, in Dade County, Florida, immediately north of the City of Miami, on certain improvement bonds of the Town issued in 1927 and 1928.

On December 1, 1934, on bill filed by The Brown-Crummer Investment Company (R. 1), answer of Ocean Beach Heights, Inc., (R. 64), answers of other defendants (R. 105), and on evidence taken (R. 126), the District Court enjoined (R. 390) the officers of the Town of North Miami from refusing to levy and collect taxes on the lands of Ocean Beach Heights, Inc., east of Biscayne Bay, and on other lands east of Biscayne Bay; and also enjoined Ocean Beach Heights, Inc., and other owners of lands east of Biscayne Bay, from interfering with the town officers in levying and taxing such lands, and from contesting by judicial proceedings the levy and collection of such taxes, and from contesting by judicial proceedings old tax certificates for the nonpayment of taxes assessed for bonded indebtedness, and from availing themselves of the decision of the Supreme Court of Florida, of March 21, 1934, in the case of *Leatherman et al.* v. *Alta Cliff Company et al.,* 114 Fla. 305, 153 So. 845. In that case, involving the same lands involved in the instant case, the Supreme Court of Florida held that the lands were never, *de jure* nor *de facto,* in the Town of North Miami, and were never subject to taxation by the Town, and cancelled assessments made for the years 1927, 1928, 1929 and 1930.

The *Alta Cliff* case followed the decision in the *quo warranto* proceeding of *Mahood et al.* v. *State ex rel. Davis;*

Attorney General, et al., 101 Fla. 1254, 133 So. 90, decided on March 24, 1931, and followed by a judgment of ouster, December 18, 1931, in the court of first instance, as to the lands involved in the instant case.

The *Alta Cliff* case and the *Mahood* case were bottomed on the decision in the case of *Town of Enterprise et al.* v. *State*, 29 Fla. 128, 10 So. 740, decided March 16, 1892, in which the Supreme Court of Florida settled the law of the State to the effect that the statutes of the State, providing for the organization of a town by mass meeting of as few as 25 persons, do not authorize a mass meeting to include in the same town noncontiguous lands.

Sections 1825, 1826, 1827 and 1828 of the Revised General Statutes of Florida (1920), printed in full in the appendix to this petition, and in force in 1926, when the Town was organized purportedly under the provisions of those sections, authorize a mass meeting of qualified electors, not fewer than 25 in number, residing in "any *hamlet, village or town,*" to assemble in mass meeting and organize an incorporated town under the general municipal incorporation statutes.

On February 5, 1926, 38 qualified electors (R. 92) residing in "a hamlet or village" west of Biscayne Bay, and immediately north of the City of Miami, assembled in mass meeting and organized a town named "Town of Miami Shores," later named "North Miami." But, in defining the boundaries of the town, the mass meeting took in 16½ square miles of territory (R. 137), including a part of Biscayne Bay and a substantial area of undeveloped lands east of Biscayne Bay and along the Atlantic Ocean, on which less than a dozen people lived. (R. 135).

The petitioners own lands east of Biscayne Bay, 10 miles by travel from the center of the "hamlet or village" west of Biscayne Bay where the mass meeting was held and the town organized.

The question presented to the Circuit Court of Appeals for decision was,

WOULD THAT COURT FOLLOW THE DECISION OF THE SUPREME COURT OF FLORIDA, IN LEATHERMAN ET AL., *v.* ALTA CLIFF COMPANY, HOLDING THAT THE LANDS IN QUESTION WERE NEVER, DE JURE NOR DE FACTO, IN THE TOWN, AND, THEREFORE, NEVER SUBJECT TO TAXATION BY THE TOWN OFFICIALS, FOR THE VERY GOOD REASON THAT THERE WAS NEVER ANY LAW IN FLORIDA THAT AUTHORIZED THE INCLUSION OF SUCH LANDS IN THE BOUNDARIES OF THE TOWN?

Circuit Judge Sibley, in an able dissenting opinion in the instant case, held that the law of Florida, as fixed by Florida statutes, and repeatedly interpreted by the Supreme Court of Florida, withheld from the mass meeting of 38 electors power to span Biscayne Bay and take into the Town of North Miami the lands east of the Bay, and that the Circuit Court of Appeals was bound by the decision of the Supreme Court of Florida in *Leatherman et al.* v. *Alta Cliff Company,* because that decision was one interpreting Florida statutes respecting the powers and duties of municipal officials—creatures of State statutes, whose source of power is the State statutes.

Circuit Judge Hutcheson, speaking for himself and for Circuit Judge Foster, in the instant case, refused to follow the Supreme Court of Florida, in *Leatherman et al.* v. *Alta Cliff Company,* and gave as a reason that the holding of the Supreme Court of Florida, in that case, that the lands east of Biscayne Bay were never *de facto* in the town, was not necessary to the decision of the case.

An unfortunate result of the decision of the Circuit Court of Appeals is that E. B. Leatherman, as Clerk of the Circuit Court of Dade County, is enjoined *from refus-*

ing to issue tax deeds based on assessments by the town officials for the years 1927, 1928, 1929 and 1930, while he is enjoined by the Supreme Court of Florida, in the *Alta Cliff* case, *from issuing* tax deeds pursuant to the identical assessments.

Review by this Court is asked for the following reasons:

1. The Circuit Court of Appeals, in the majority opinion, by refusing to follow the Florida case of *Leatherman et al. v. Alta Cliff Company*, has decided an important question of local law in a way probably in conflict with applicable local decisions.

2. The Circuit Court of Appeals, in the majority opinion, has decided an important question of general law in a way probably untenable and in conflict with the weight of authority.

Accompanying this petition are the following mentioned documents:

(a) A certified transcript of the record of the case, including the proceedings in the Circuit Court of Appeals;

(b) Ten copies of the record of the case as printed below, together with the proceedings and opinions of the Judges of that Court;

(c) Forty printed copies of this petition and the supporting brief.

WHEREFORE, your petitioners pray that a writ of certiorari may issue out of, and under the seal of, this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Judicial Circuit, requiring that the said cause be certified to this Honorable Court for review and determination, and that your petitioners may have such

other and further relief in the premises as to this Honorable Court shall seem appropriate and in conformity with the laws of the United States.

J. Julien Southerland,
Scott M. Loftin,
Jno. P. Stokes,
James E. Calkins,
Loftin, Stokes & Calkins,
Ingram Building, Miami, Florida,
Solicitors for Ocean Beach Heights, Inc.
Henry K. Gibson,
Ingram Building, Miami, Florida,
Solicitor for the other Petitioners above-named.

BRIEF.

Leatherman et al. v. *Alta Cliff Company et al.*, 114 Fla. 305, 153 So. 845, was decided by the Supreme Court of Florida on March 21, 1934. It involved the validity of taxes assessed by the Town of North Miami, against lands east of Biscayne Bay, for the years 1927, 1928, 1929 and 1930. It was contended in that case by Ocean Beach Heights, Inc., and other owners of lands east of Biscayne Bay, that, under the decision of *Mahood et al.* v. *State ex rel. Davis, Attorney General, et al.*, 101 Fla. 1254, 133 So. 90, decided March 24, 1931, followed by the entry of a judgment of ouster on December 18, 1931, in the Circuit Court of Dade County, as to the lands east of Biscayne Bay, the assessments were made without lawful authority. and therefore, void, because such lands were never in the town. The Supreme Court of Florida upheld the contention.

Circuit Judge Sibley, in his dissenting opinion, held that the *Alta Cliff* case was controlling in the instant case.

Circuit Judges Hutcheson and Foster refused to follow the *Alta Cliff* case on the ground, as stated in the prevailing opinion of Judge Hutcheson, that it was not necessary, in 1934, for the Supreme Court of Florida to decide that the decision of the Supreme Court in the *Mahood* case and the judgment of ouster, in 1931, were authority for holding void taxes assessed for the years 1927, 1928, 1929 and 1930, because the assessed lands were never in the town.

Since the contested taxes were for years *anterior* to the decision in the *Mahood* case and the judgment of ouster, it would seem to follow that the Supreme Court of Florida was necessarily required to determine whether the decision in the *Mahood* case and the judgment of ouster spoke *only in futuro*, as Judges Hutcheson and Foster thought, or looked backward as well as forward, as Ocean Beach Heights, Inc., and others contended, and as the Supreme Court of Florida decided.

The question as to the effect of the decision in the *Mahood* case and the judgment of ouster on the *antecedently* assessed taxes against the lands east of Biscayne Bay, was one for the Supreme Court of Florida. When that court decided the effect of its previous decision, it was left to the Circuit Court of Appeals only to follow the interpretative decision.

In *Hawks* v. *Hamill,* 288 U. S. at page 52, 77 Law Ed. at page 617, this Court observed that the Federal courts should follow "the considered dictum" of a State Supreme Court on a local question. That case was one reviewed on certiorari to a Circuit Court of Appeals.

Norton v. *Shelby County,* 118 U. S. 425, 30 Law. Ed. 178, is, in our opinion, very much in point here.

As pointed out in the petition for review on certiorari, the *Alta Cliff* case and the *Mahood* case are bottomed on the case of *Town of Enterprise et al.* v. *State,* 29 Fla. 128, 10 So. 740, decided as far back as March 16, 1892.

It has long been established law in Florida that a municipality may not have a *de facto* existence unless there be a law authorizing its creation.

Duke v. *Taylor,* 37 Fla., 64, 19 So. 172, 31 L. R. A. 484, 53 A. S. R. 232.

Such is the general rule of law.

8 Fletcher Cyclopedia Corporations, Section 3785, page 79;

Norton v. *Shelby County,* 118 U. S. 425, 30 Law Ed. 178.

And so, in the *Alta Cliff* case, the Supreme Court of Florida decided that the lands east of Biscayne Bay were never *de facto* in the Town of North Miami, because there never was a law authorizing the inclusion of such lands in the town.

A brief review of the Florida cases cited in the opinion of Judge Hutcheson, to support his conclusion, may not be amiss.

In *State ex rel. Fidelity Life Ass'n* v. *City of Cedar Key et al.,* 122 Fla. 454, 165 So. 672, the officers of the City, respondents in a mandamus proceeding to force collection of taxes to pay bonds, *attempted to deny the existence of the City* that issued the bonds, which had been judicially and legislatively validated; and the existence of the City having been implicitly recognized by a legislative act of 1917 (see top of page 676, 165 So.). The City officers attempted to repudiate the bonds on the ground that, in a *quo warranto* proceeding by two property owners, in the Circuit Court, the court held *the City* unlawfully created. The Supreme Court of Florida held that the City officers could not repudiate the bonds on the strength of the judgment of ouster of the City obtained by the two property owners. The court, however, in the concluding paragraph of its opinion, *saved the rights of individual property owners who might be able to show that their lands were never lawfully included in the City.* In the instant case, there is no attempt to deny the existence of the Town of North Miami, and the validity of the bonds issued by the Town is not questioned, and the officers of the Town are not opposing payment of the bonds. What we have here is just exactly what the Supreme Court of Florida referred to in the concluding paragraph of its opinion, namely, *individual property owners* setting up that their lands *never were lawfully in the Town* of North Miami, and they are supporting their contention with the *Alta Cliff* case, precisely in point.

In *City of Winter Park* v. *Dunblaine, Inc.,* 121 Fla. 600, 164 So. 366, a bondholder sued the issuing City on its bonds. The City asked, and was refused leave, to file a plea alleging generally that *the bonds were not issued for a municipal purpose,* but for the purpose of improving wild lands and

aiding private individuals and corporations which owned the lands. Held, plea too general, set up no defense, no error in refusing leave to file it.

In *State ex rel. Landis, Attorney General et al.* v. *City of Coral Gables,* 120 Fla. 492, 163 So. 308, the *legislature had defined the boundaries of the City,* in which the property owner acquiesced for six or eight years, during which time large sums of money were loaned to the City and many public improvements constructed on the faith of the validity of the legislative act defining the boundaries of the City. Held, in *quo warranto* proceedings by a property owner, who claimed that his lands received no benefits by being in the City, that he was estopped by delay and acquiescence.

In *Sparks et al.* v. *Ewing et al.,* 120 Fla. 520, 163 So. 112, there was involved *the validity of a bond issue* by the City of Hialeah, issued without a vote of the people, under special charter provision claimed to dispense with a vote of the people. The bonds had been judicially validated. Held, the Constitution did not require a vote of the people, and that, in the validation proceeding, the court had implicitly, at least, held the bonds validly issued, and that such validation proceedings foreclosed the question as to *the validity of the questioned bonds.*

We shall touch briefly on some of the points emphasized in the prevailing opinion of Judge Hutcheson, for the purpose of demonstrating that the learned Judge stressed points of no significance under Florida law.

It was erroneous to recite in the opinion, "* * * the proposed corporate limits as set out in the * * * bonds as fixed in forming the town, definitely included that east of the bay." In fact, the bonds do not purport to recite the boundaries of the town.

Because the Supreme Court of Florida, in the *Alta Cliff* case, disclaimed any intention of determining whether the

legislature might include in one town lands separated by Biscayne Bay, under the circumstances surrounding the organization of North Miami, by mass meeting, because that question was not involved in the case, does not warrant the inference, if it be important, that the court would uphold such an Act. In *State* v. *Stuart,* 97 Fla. 69, 120 So. 335, the court let out of the City of Stuart lands separated from the body of the city by a stream, although the boundaries of the city had been defined by the legislature.

The fact that the bonds issued by the Town of North Miami have been judicially validated sets at rest only the validity of the bonds, and the validity of the bonds is conceded in this case. The boundaries of the town, or the inclusion of the lands east of Biscayne Bay, was not adjudged, and was not justiciable, in the validation proceeding. *State* v. *City of Coral Gables,* 114 Fla. 326, 154 So. 234.

In the opinion of Justice Hutcheson it is stressed that acquiescence by the owners of the land situated east of Biscayne Bay in the exercise of municipal jurisdiction was a ground for holding that the municipality was a *de facto* corporation and, therefore, that the lands located east of Biscayne Bay must be held liable for the bonds. We should like to point out that acquiescence (if any such there was) (which means in this case estoppel) does not create rights —it prevents one from asserting a defense—it goes to the remedy, not to the right. This doctrine can give the bondholders no greater rights than they otherwise have. There was no evidence before the court in this cause to show that the bondholders acted or relied upon the failure of the landholders east of the bay to protest against the unlawful inclusion of their lands in the municipality.

While estoppel may work to prevent one from seeking to have declared void an act which is voidable, estoppel can never work so as to make valid that which is absolutely

void. So in this case: The question in *Mahood* v. *State* was whether when the alleged municipality was formed the territory east of the bay was legally included. It was not a detachment proceeding. It was not a petition to the court to prevent the town from exercising jurisdiction over the lands in question *in the future.* It was an inquiry, by what right the alleged Town Officers were assuming to exercise such jurisdiction at all; and the effect of the decision in *Mahood* v. *State,* 133 So. 90, and the following judgment of the trial court was that the Town Officers *never* had any right to exercise jurisdiction over, and hence *never* had any right to tax, the lands east of the bay, because there was no authority of law for the inclusion of those lands within the alleged corporate limits of the town when it was formed. That necessarily means that the lands east of the bay were *never in the town.* It follows that their attempted inclusion was utterly *void.* No estoppel will work to make valid that which is void. Estoppel cannot breathe the breath of life into a dead thing.

State v. *Greer,* 88 Fla. 249, 102 So. 739, 37 A. L. R. 1298.

The court's attention is respectfully invited to the point that this is a suit in equity, and we believe that, as pointed out by Justice Sibley in his dissenting opinion, the equities are with the owners of lands east of the bay and not with the bondholders.

J. Julien Southerland,
Scott M. Loftin,
Jno. P. Stokes,
James E. Calkins,
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Ingraham Building, Miami, Florida,
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Solicitors for the Petitioners.

APPENDIX.

SECTIONS 1825, 1826, 1827, 1828 OF THE REVISED GENERAL STATUTES OF FLORIDA, 1920, PROVIDING FOR THE INCORPORATION OF A TOWN BY MASS MEETING.

"1825. Number of inhabitants necessary to incorporate. —It shall be lawful for the male inhabitants of any hamlet, village or town in this State, not less than twenty-five in number, who shall have the qualifications hereinafter prescribed to establish for themselves a municipal government with corporate powers and privileges as hereinafter provided.

"1826. Distinction between cities and towns.—Whenever any municipal government is established, and it shall appear that there are three hundred registered voters within the limits hereby to be designated, it shall be and the same is hereby incorporated and designated as a city, entitled to the privileges of a city. All municipal governments having a less number of voters than those named above shall be and the same are hereby designated and declared incorporated towns, entitled to the privileges and rights of incorporated towns.

"1827. Publication of notice to assemble and organize.— Whenever any community of persons shall desire to form a municipal corporation under the provisions of this chapter, they shall, for a period of not less than thirty days, cause to be published in some newspaper of the county, or by posting in three places of public resort in the immediate vicinage, a notice requiring all persons who are registered voters, residing in the proposed corporate limits, which shall be stated in this notice, to assemble at a certain time and place to select officers and organize a municipal government.

"1828. Proceedings of meeting.—At the same time and place designated in the notice aforesaid, the qualified electors present, being not less than two-thirds of those whom it is proposed to incorporate, and not less than twenty-five in number, shall select a corporate name and seal for the

municipality which they propose to form, and designate by definite metes and bounds the territorial limits thereof. They shall then proceed to choose by a vote of a majority of the said electors a mayor and not more than nine and not less than five aldermen, who shall be known as the city council, and in whom shall vest the government of the city. There shall also be chosen at the same time and place, and in like manner, a city clerk and a marshal. The mayor, clerk and the marshal shall continue in office for the period of one year from the date of their election, or until their successors are elected and qualified: Provided, That the metes and bounds in this section shall not in any case apply to the fixing or establishing the boundary lines of towns and cities now or heretofore incorporated by the now existing laws of this State."

NOTE.—The opinion of the court and dissenting opinion, in the instant case, will be found at pages 429 and 438 of the certified copy of the transcript of the record of the United States Circuit Court of Appeals and they are not elsewhere reported.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 10

OCEAN BEACH HEIGHTS, INC., NORMANDY BEACH DEVELOPMENT COMPANY, ET AL.,
Petitioners,

vs.

THE BROWN CRUMMER INVESTMENT COMPANY, TOWN OF NORTH MIAMI, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF OF PETITIONERS

J. JULIEN SOUTHERLAND,
SCOTT M. LOFTIN,
JNO. P. STOKES,
JAMES E. CALKINS,
LOFTIN, STOKES & CALKINS,
HENRY K. GIBSON,
Miami, Florida,
Solicitors for Petitioners.

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OTHER AUTHORITIES CITED.

8 Fletcher Cyclopedia of Corporations, Section 3785, page 79 9
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BRIEF OF PETITIONERS

1.

Opinions Below.

The opinions of the Judges of the Circuit Court of Appeals are reported at pages 978-981 of 87 F. (2d).

The opinion of the District Judge on final hearing has not been reported but appears at page 378 of the Transcript of the Record.

2.

Jurisdiction of This Court.

1. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code (28 U. S. C. A., Section 347 (a)), as amended by the Act of Congress of February 13, 1925, Chapter 229, Section 1, 43 Stat. 938.

The petition for certiorari was filed February 16, 1937, and the writ was granted April 12, 1937.

2. The decision to be reviewed is the result of the opinion of two of the Circuit Judges, rendered January 22, 1937, affirming the final decree of the District Judge, in the Southern District of Florida, at Miami, dated February 10, 1936.

3.

Statement of the Case.

The Brown Crummer Investment Company, a Kansas corporation, filed its bill in chancery, in the District Court of the Southern District of Florida, at Miami, against the Town of North Miami, its officials, and the petitioners, who own real estate along the Atlantic Ocean, east of Biscayne Bay, for the purpose of enjoining the Town and its officials from failing and refusing to assess and collect, and the petitioners, as land owners, from refusing to pay to the Town, for the benefit of the plaintiff, *ad valorem* taxes on their real estate, claimed to be taxable for the liquidation of a common law judgment, rendered June 19, 1931, in approximately the sum of $11,790.00, recovered by the plaintiff in the same Court against the Town, on certain general improvement bonds dated January 1, 1927 (R. 1).

The petitioners here, defendants to the bill of complaint, filed motions to dismiss the bill (R. 52, 54), which were

denied by the District Judge (R. 55). They thereupon answered (R. 64, 105). Two answers were filed by the different parties but they are substantially the same.

By their answers the petitioners here, defendants to the bill, averred that their lands were not subject to taxation for the purpose alleged in the bill, because their lands had never been in the territorial limits of the Town of North Miami, for the reason that the Florida Statutes, under which the Town was organized by 38 electors in mass meeting, on February 5, 1926, did not authorize the villagers living on the west side of Biscayne Bay to span the Bay and take in lands on the east side of the Bay, and that the Supreme Court of Florida, in *Mahood et al.* v. *State of Florida, ex rel., Davis, Attorney General, et al.*, 101 Fla. 1254, 133 So. 90, decided March 24, 1931, had so held respecting precisely the same lands in question here; and that the Supreme Court of Florida, in *Leathermann et al.* v. *Alta Cliff Company, et al.*, 114 Fla. 305, 153 So. 845, decided March 21, 1934, had held that these same lands were never, *de facto* nor *de jure*, in the said Town, and, therefore, never subject to taxation by the Town.

The Town of North Miami adjoins the City of Miami on the north, and both are in Dade County. The Town was organized by a mass meeting held on the west side of Biscayne Bay. The boundaries of the Town were defined by resolution adopted by the mass meeting, and it took in 16½ square miles of territory and spanned the Bay to take in a substantial area of undeveloped lands east of the Bay and along the Atlantic Ocean. Fewer than a dozen people lived in the area east of the Bay, and a circuitous route 10 miles long had to be traveled from petitioners' lands to reach the Town Hall.

The Florida statute under which the Town was organized is copied in full in the appendix to this brief.

The cause was referred to a master in chancery (R. 124), who took evidence and reported the same to the District Judge with his findings (R. 126).

The Master's Report was excepted to (R. 375).

The exceptions were overruled and the findings of fact and conclusions of law were made in writing (R. 378) and followed by the entry of a sweeping final decree for the plaintiff below, Respondents here (R. 390).

By the final decree, the District Judge:

(a) Enjoined the petitioners herein, defendants to the bill, "or any other person, firm or corporation owning, holding or interested in any property within the boundaries of the Town of North Miami, formerly Miami Shores, and who holds, owns or is interested in said property under and by virtue of title from any of said defendants above-named," from instituting any action at law or in equity or from prosecuting any action now pending against E. B. Leatherman, Clerk of the Circuit Court of Dade County, or his successor or successors in office, to compel the cancellation of any tax certificates held by him and issued by the Town of North Miami, formerly Miami Shores, on account of the nonpayment of taxes levied by it on property within the area above described, or to prevent him from selling said tax certificates or issuing tax deeds thereon.

(b) Enjoined Ocean Beach Heights, Inc., from enforcing the decree of the Circuit Court of Dade County, declaring void the tax certificates described in the suit of *Alta Cliff Company et al.* v. *E. B. Leatherman et al.*, and from preventing by legal action the issuance of tax deeds upon the said certificates.

(c) Enjoined other owners of lands east of Biscayne Bay from in any manner interfering with the assessment and collection of *ad valorem* taxes by the Town of North Miami.

(d) Enjoined the Town of North Miami and its officials "from refusing to perform in full his or their legal duties in the matter of assessing, levying and collecting taxes and/or assessments which may have been heretofore already levied by the Town of North Miami, or which may hereafter be levied by it or by its duly authorized officers and agents against lands" included in a described area, which are the lands east of Biscayne Bay.

(e) Enjoined E. B. Leatherman, as Clerk of the Circuit Court of Dade County, from cancelling tax certificates issued by the Town of North Miami, on account of the nonpayment of taxes levied against the lands east of Biscayne Bay.

By a general recital the injunction was restricted to taxes levied for debt service.

On appeal by the Petitioners here, defendants to the bill, the final decree was affirmed by the United States Circuit Court of Appeals for the Fifth Circuit, Judge Sibley dissenting.

4.

Assigned Errors to be Argued.

(A) THE CIRCUIT COURT OF APPEALS ERRED IN NOT FOLLOWING THE DECISION OF THE SUPREME COURT OF FLORIDA IN LEATHERMAN ET AL. VS. ALTA CLIFF CO. ET AL., 114 FLA. 305, 153 So. 845.

(B) THE CIRCUIT COURT OF APPEALS ERRED IN HOLDING THAT UNDER GENERAL LAW, IN THE ABSENCE OF STATUTORY AUTHORITY FOR INCORPORATING THE LANDS IN THE TOWN, SUCH LANDS WERE DE FACTO IN THE TOWN WHEN THE BONDS WERE ISSUED AND, THERFORE, SUBJECT TO TAXATION FOR THE PURPOSE OF RAISING MONEY WITH WHICH TO PAY THE BONDS.

5.

ARGUMENT.

A. The Federal Courts are obliged to follow the State Supreme Court's interpretation of a State statute, especially one relating to State and local governmental units, and their powers and duties.

The Supreme Court of Florida, in *Leatherman et al.* v. *Alta Cliff Co. et al.*, 114 Fla. 305, 153 So. 845, decided March 21, 1934, held that the lands east of Biscayne Bay were never, *de jure* nor *de facto,* in the Town of North Miami, and, therefore, were never subject to municipal taxation, for the reason that there was never a law in Florida which authorized the mass meeting of 38 voters living west of Biscayne Bay, on February 5, 1926, to reach out across the Bay and take in lands on the other side. The identical lands involved in the instant case were involved in the *Alta Cliff* case.

Previously; in *Mahood et al.* v. *State ex rel. Davis, Attorney General, et al.*, 101 Fla. 1254, 133 So. 90, decided March 24, 1931, the Florida Supreme Court, in a *quo warranto* proceeding involving the lands involved here, laid the basis for the entry of a judgment of ouster in the Circuit Court of Dade County, Florida, on December 18, 1931.

And way back, in 1892, the Supreme Court of Florida, in *Town of Enterprise et al.* v. *State,* 29 Fla. 128, 10 So. 740, held that a mass meeting could not bring into a town noncontiguous lands.

The Supreme Court of Florida has consistently held that lands separated from other lands cannot by a mass meeting be incorporated in a town.

The District Judge seemed to consider that he was not bound by the two decisions of the Supreme Court of Florida, because both came after the issuance of the bonds by the

Town. On page 388 of the Record will be found the District Judge's quotation from the opinion of this Court in *Bourbon County* v. *Block*, 99 U. S. 686, 25 L. Ed. 491, decided May 5, 1879, and a reference to

Clapp v. *Otoe County, Neb.*, 104 Fed. 473, decided October 9, 1900;

County Commissioners of Comanche County, Kansas, v. *Lewis*, 133 U. S. 198, 33 L. Ed. 604, decided January 27, 1890.

In the first place, the two Florida cases relied on by the petitioners, while decided after the bonds were issued by the Town of North Miami, were nevertheless bottomed on a case holding to like effect, decided March 16, 1892, and reported as *Town of Enterprise et al.* v. *State*, 29 Fla. 128, 10 So. 740.

In the second place, whatever may have been the old rule, the present rule requires that the Federal courts follow the interpretation of a State statute by the Supreme Court of the State, even if the interpretation be made by the State court for the first time after the issuance of the bonds in question.

Marine National Exchange Bank of Milwaukee v. *Kalt-Zimmers Manufacturing Co.*, 293 U. S. 357, 79 L. Ed. 427;

Hawks v. *Hamill*, 288 U. S. 52, 77 L. Ed. 610;

Supreme Lodge v. *Meyer*, 265 U. S. 30, 68 L. Ed. 885;

Sioux County v. *National Surety Co.*, 276 U. S. 238, 240, 72 L. Ed. 547, 549.

In *Hawks* v. *Hamill*, *supra*, this Court observed that the Federal courts should follow "the considered dictum" of a State supreme court on a local question.

Circuit Judges Hutcheson and Foster, on the appeal, seem to have disregarded the Florida case of *Leatherman*

et al. v. *Alta Cliff Co. et al.*, on the ground that it was not necessary, in 1934, for the Court to interpret the decision in the *Mahood* case, decided in 1931, as looking backward as well as forward, and to hold that the lands east of Biscayne Bay were never, *de jure* nor *de facto*, in the Town, and, therefore, never subject to taxation by the Town.

The *Alta Cliff* case involved the validity of the assessments of the lands east of Biscayne Bay for the years 1927, 1928, 1929 and 1930; the judgment of ouster in the *Mahood* case was entered in 1931; and the *Alta Cliff* case was instituted in 1932. The effect of the judgment of ouster on the prior assessment of the lands was the only question presented to the Florida Supreme Court in the *Alta Cliff* case. That Court was obliged to determine whether the subsequent judgment of ouster invalidated the prior assessments, and the Court held that it did. How can it be said to be *obiter dictum* for a court to decide the one question presented for adjudication?

But if the Florida Court's holding were only a "considered dictum," the Federal courts would be bound to follow it under the recent decision of this Court, in *Hawks* v. *Hamill, supra.*

B. The Florida cases aside, lands cannot be de facto in a town absent statutory authority to incorporate the lands in the town.

The two circuit judges, after disregarding the Florida cases, held that the lands east of Biscayne Bay were *de facto* in the Town of North Miami when the bonds were issued, despite the fact there was no law in existence at the time under which the lands east of Biscayne Bay could have been incorporated in the Town by the mass meeting.

There must be an existing law, compliance with which would bring the lands *de jure* into the Town, before the

lands could, under any circumstances, fairly be said to be *de facto* in the Town.

Norton v. *Shelby County*, 118 U. S. 425, 30 L. Ed. 178;
Duke v. *Taylor*, 37 Fla. 64, 19 So. 172, 31 L. R. A. 484, 53 A. S. R. 232;
8 Fletcher Cyclopedia of Corporations, Section 3785, Page 79.

C. Petitioners are not estopped from asserting that their lands have never been in the town.

The amount of money spent east of Biscayne Bay was insignificant, and was primarily for the purpose of protecting persons living west of the Bay from mosquitoes.

In the absence of statutory warrant for including in the Town the lands east of the Bay, acquiescence, if acquiescence there was, cannot substitute for jurisdiction withheld by the legislature.

Hayes v. *Holly Springs*, 114 U. S. 120, 29 L. Ed. 81;
Merrill v. *Town of Monticello*, 138 U. S. 673, 34 L. Ed. 1069, 1078;
Beyer v. *City of Athens, Tenn.*, 249 Fed. Rep. 849;
Weinberger v. *Board of Public Instruction of St. Johns County et al.*, 93 Fla. 470, 112 So. 253.

D. E. B. Leatherman, as clerk of the Circuit Court of Dade County, Florida, the officer authorized by law to issue tax certificates consequent to delinquent taxes, and tax deeds when the certificates are two years old and the lands not redeemed, is in the predicament of first having been enjoined by the Alta Cliff case from assigning tax certificates, and issuing tax deeds, touching the lands east of Biscayne Bay, and then enjoined from refusing so to do by the decree of the District Judge, affirmed by the Circuit Court of Appeals, in the instant case.

We now have the tax certificates and the tax deeds, issued as the result of nonpayment of taxes, assessed by

the Town, against lands east of Biscayne Bay, void in the State courts and valid in the Federal courts.

Moreover, we have litigants hereafter enjoined by the Federal courts from proceeding in the State courts to question the validity of such taxes, and the parties to the *Alta Cliff* case enjoined from enforcing the decree entered by the Court of first instance and affirmed by the highest State court.

The authority and powers of officials who are creatures of State law, predetermined and limited by the Supreme Court of Florida's interpretation of the State statute, are enlarged by a subsequent decision of a Federal court, which refuses to follow the interpretation of the State statute by the highest State court.

E. Judicial validation of bonds did not foreclose right of property owners to contest the claim that their lands were never in the town.

Judicial validation of the bonds, a special statutory proceeding, did not foreclose the question as to the boundaries of the Town, because that question is not justiciable in such a proceeding.

State v. *City af Coral Gables,* 114 Fla. 326, 154 So. 234; *State ex rel. Fidelity Life Association* v. *City of Cedar Keys,* 122 Fla. 454, 165 So. 672, concluding paragraph of the opinion.

F. A brief review of the Florida cases cited in the opinion of Judge Hutcheson, to support his conclusion, may not be amiss.

In *State ex rel. Fidelity Life Ass'n.* v. *City of Cedar Keys et al.,* 122 Fla. 454, 165 So. 672, the officers of the city, respondents in a mandamus proceeding to force collection of taxes to pay bonds, attempted to deny the existence of the city that issued the bonds, which had been judicially

and legislatively validated; and the existence of the city having been impliedly recognized by a legislative act of 1917 (see top of page 676, 165 So.). The city officers attempted to repudiate the bonds on the ground that, in a *quo warranto* proceeding by two property owners, in the Circuit Court, the court held the City unlawfully created. The Supreme Court of Florida held that the City officers could not repudiate the bonds on the strength of the judgment of ouster of the City obtained by the two property owners. The court, however, in the concluding paragraph of its opinion, saved the rights of individual property owners who might be able to show that their lands were never lawfully included in the City. In the instant case, there is no attempt to deny the existence of the Town of North Miami, and the validity of the bonds issued by the Town is not questioned, and the officers of the Town are not opposing payment of the bonds. What we have here is just exactly what the Supreme Court of Florida referred to in the concluding paragraph of its opinion, namely, individual property owners setting up that their lands were never lawfully in the Town of North Miami.

In *City of Winter Park* v. *Dunblaine, Inc.*, 121 Fla. 600, 164 So. 366, a bondholder sued the issuing City on its bonds. The City asked, and was refused leave, to file a plea alleging generally that the bonds were not issued for a municipal purpose, but for the purpose of improving wild lands and aiding private individuals and corporations which owned the lands. Held, plea too general, set up no defense, no error in refusing leave to file it.

In *State ex rel. Landis, Attorney General, et al.* v. *City of Coral Gables,* 120 Fla. 492, 163 So. 308, the legislature had defined the boundaries of the City, in which the property owner acquiesced for six or eight years, during which time large sums of money were loaned to the City and

many public improvements constructed on the faith of the validity of the legislative act defining the boundaries of the City. Held, in *quo warranto* proceedings by a property owner, who claimed that his lands received no benefits by being in the City, that he was estopped by delay and acquiescence.

In *Sparks et al.* v. *Ewing et al.*, 120 Fla. 520, 163 So. 112, there was involved the validity of a bond issue by the City of Hialeah, issued without a vote of the people, under special charter provision claimed to dispense with a vote of the people. The bonds had been judicially validated. Held, the Constitution did not require a vote of the people, and that, in the validation proceedings, the court had implicitly, at least, held the bonds validly issued, and that such validation proceedings foreclosed the question as to the validity of the questioned bonds.

We shall touch briefly on some of the points emphasized in the prevailing opinion of Judge Hutcheson, for the purpose of demonstrating that the learned Judge stressed points of no significance under Florida law.

It was erroneous to recite in the opinion, " * * * the proposed corporate limits as set out in the * * * bonds as fixed in forming the town, definitely included that east of the bay." In fact, the bonds do not purport to recite the boundaries of the town.

Because the Supreme Court of Florida, in the *Alta Cliff* case, disclaimed any intention of determining whether the legislature might include in one town lands separated by Biscayne Bay, because that question was not involved in the case, does not warrant the inference that the court would uphold such an Act. In *State* v. *Stuart*, 97 Fla. 69, 120 So. 335, the court let out of the City of Stuart lands separated from the body of the city by a stream, although the boundaries of the city had been defined by the legislature.

G. We would emphasize the difference between a judicial declaration that lands east of Biscayne Bay were never in the Town of North Miami, because of the lack of legislative authority to incorporate the lands in the Town and the judicial letting out of a town incorporated by special act of the Legislature of wild lands so remotely situated from the improved part of the town as not to be benefited by being included in the town.

In the former case it cannot fairly be stated that the lands were ever in the town, *de jure* or *de facto*. In the latter case there is reason for holding that the lands were in the town until let out.

H. Since the lands east of Biscayne Bay are not now, and have never been, in the Town of North Miami, it follows that the taxing officials of the Town do not now have, and have never had, lawful authority for assessing the lands and taxing the owners.

Courts may administer existing laws but they are without legislative functions. Courts may command town officers to perform duties and exercise powers conferred on them by law, but courts may not create legal duties and confer lawful powers.

I. Inasmuch as the lands in question are not now, and have never been, in the Town of North Miami, it follows also that owners of such lands, otherwise qualified to vote, have no voice in choosing the town officials who would exercise the important functions of assessing and taxing the lands and disbursing the funds thereby raised. It would be a case of taxation without representation.

We submit that the decree of the Circuit Court of Appeals should be reversed with directions to reverse the

decree of the District Court and order the bill of complaint dismissed.

LOFTIN, STOKES & CALKINS,
Ingraham Building, Miami, Florida,
Solicitors for Ocean Beach Heights, Inc.

——— ———,

Ingraham Building, Miami, Florida,
Solicitor for Normandy Beach Development Company, a corporation, LUCILLE F. ENSIGN *and her husband,* WALTER C. ENSIGN, *and* TATUM'S OCEAN PARK COMPANY, *a Corporation.*

(1220)

APPENDIX.

SECTIONS 1825, 1826, 1827, 1828 OF THE REVISED GENERAL STATUTES OF FLORIDA, 1920, PROVIDING FOR THE INCORPORATION OF A TOWN BY MASS MEETING.

"1825. Number of inhabitants necessary to incorporate.—It shall be lawful for the male inhabitants of any hamlet, village or town in this State, not less than twenty-five in number, who shall have the qualifications hereinafter prescribed to establish for themselves a municipal government with corporate powers and privileges as hereinafter provided.

"1826. Distinction between cities and towns.—Whenever any municipal government is established, and it shall appear that there are three hundred registered voters within the limits hereby to be designated, it shall be and the same is hereby incorporated and designated as a city, entitled to the privileges of a city. All municipal governments having a less number of voters than those named above shall be and the same are hereby designated and declared incorporated towns, entitled to the privileges and rights of incorporated towns.

"1827. Publication of notice to assemble and organize.—Whenever any community of persons shall desire to form a municipal corporation under the provisions of this chapter, they shall, for a period of not less than thirty days, cause to be published in some newspaper of the county, or by posting in three places of public resort in the immediate vicinage, a notice requiring all persons who are registered voters, residing in the proposed corporate limits, which shall be stated in this notice, to assemble at a certain time and place to select officers and organize a municipal government.

"1828. Proceedings of meeting.—At the same time and place designated in the notice aforesaid, the qualified electors present, being not less than two-thirds of those whom it is proposed to incorporate, and not less than twenty-five in number, shall select a corporate name and seal for the

municipality which they propose to form, and designate by definite metes and bounds the territorial limits thereof. They shall then proceed to choose by a vote of a majority of the said electors a mayor and not more than nine and not less than five aldermen, who shall be known as the city council, and in whom shall vest the government of the city. There shall also be chosen at the same time and place, and in like manner, a city clerk and a marshal. The mayor, clerk and the marshal shall continue in office for the period of one year from the date of their election, or until their successors are elected and qualified: Provided, That the metes and bounds in this section shall not in any case apply to the fixing or establishing the boundary lines of towns and cities now or heretofore incorporated by the now existing laws of this State."

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STATUTES

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1936

NO. 787

OCEAN BEACH HEIGHTS, INC., a corporation; NORMANDY BEACH DEVELOPMENT COMPANY, a corporation; LUCILE F. ENSIGN, and her husband, WALTER C. ENSIGN, and TATUM'S OCEAN PARK COMPANY, a corporation,

Petitioners,

-vs-

THE BROWN-CRUMMER INVESTMENT COMPANY, a Kansas corporation, and TOWN OF NORTH MIAMI, a municipal corporation; DANA W. ROBBINS, as Mayor of said Town, J. H. GRIBBLE, as Tax Collector and Tax Assessor of the said Town, MISS E. MAY AVIL, as Clerk and Treasurer of said Town, and E. C. HARNER, MRS. CECILLE SEVIER, MRS. ELLA F. KLEFEKER, D. D. AVIL and H. W. JONES, as Members of the Town Council of said Town,

Respondents.

BRIEF OF RESPONDENTS OTHER THAN THE BROWN-CRUMMER INVESTMENT COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

(Emphasis ours unless otherwise stated herein.)

The decree of the United States Circuit Court of Appeals for the Fifth Circuit, entered in the above entitled cause on January 22, 1937, affirmed a decree of the United States District Court entered on February 10, 1936 (R. 390-395), and petition for rehearing in said cause was denied by the Circuit Court of Appeals on February 5, 1937.

OPINIONS BELOW.

The questions passed on by the Circuit Court of Appeals in the decision of which the petitioners for certiorari now complain, were first presented to the United States Circuit Court of Appeals in the case of **Normandy Beach Development Company v. United States ex rel. Brown-Crummer Investment Company,** 69 Fed. (2d) 105. The Court dismissed the appeal, however, without passing on the questions involved. Although the dismissal of the appeal had the practical effect of affirming the judgment below, the judgment-plaintiff was unable to enforce the judgment without the aid of a court of equity, and the chancery suit with which the Court is now concerned was subsequently brought. The present petitioners moved to dismiss the bill of complaint in the District Court, but their motion was denied, as will appear from **Brown-Crummer Investment Company v. Town of North Miami, et al.,** 11 Fed. Supp. 73. After final decree against the present petitioners, the appeal to the Circuit Court of Appeals for the Fifth Circuit, was entered, and the lower court was affirmed. However, the opinion of the last mentioned Court has not yet been published.

STATEMENT.

The essential facts of this case, as shown by the record, are correctly and succinctly stated in the opinion of the Circuit Court of Appeals. For the sake of brevity they will not be repeated here in detail. However, it may be mentioned at this point that at the time the Town of North Miami was incorporated, southern Florida was experiencing one of the greatest real estate booms in history. Villages, towns and cities were expanding phenomenally. Outlying areas were rapidly being subdivided and platted for building purposes, and were being miraculously improved with streets, sidewalks, water mains and other utilities.

At the time of the incorporation of the Town, more than two thousand people lived in the area included within the corporate limits (R. 197), but only forty-nine of them (R. 93) were registered voters, so great had been the sudden influx.

The area originally included within the corporate limits of the Town of Miami Shores (now North Miami) was indented by the upper reaches of Biscayne Bay (R. 83). The northeast corner of this area is separated from the peninsula (Petitioners' lands) by a narrow body of water known as the East Coast Canal, with Biscayne Bay extending southward in triangular shape. The causeway referred to in the opinion, and elsewhere, throughout the record, would have extended from the mainland eastward to the peninsula at a point just north of the inlet marked "Baker's Haulover Cut" on the map marked "Ocean Beach Heights Exhibit A" (R. 83), and it will be observed from the engineer's scale, that its length would have been ap-

proximately one mile. This is mentioned for the reason that the statement contained in the petition to the effect that "the petitioners own land east of Biscayne Bay, ten miles by travel from the center of the hamlet or village west of Biscayne Bay where the mass meeting was held and the town organized," might, otherwise, be confusing.

Another statement contained in the petition is to the effect that the cases of **Mahood, et al. v. State ex rel. Davis**, 101 Fla. 1254, 133 So. 90, and **Leatherman v. Alta Cliff Company, et al.**, 114 Fla. 305, 153 So. 845 (referred to as the "Mahood Case" and as the "Alta Cliff Case") were bottomed on the decision in the case of **Town of Enterprise v. State**, 29 Fla. 128, 10 So. 740. Such statement, while ostensibly correct, might be misleading, if accepted at its full face value, for the reason that in the Enterprise case, the Florida Supreme Court recognized and expressly stated that a de facto municipal corporation might exist under a void law, and in no way intimated that a judgment of ouster, terminating the de facto corporation, could be given retroactive effect. Thus, the parts of the decisions in the Mahood and in the Alta Cliff cases, upon which the petitioners rely, are not supported by the earlier Enterprise case, as the petition seems to indicate.

It is true that in the Enterprise case, the Florida Supreme Court did hold that the inhabitants of a city or town cannot, under the general act for the formation of municipal corporations in force in Florida, include within the corporate limits of the municipality so created, two distinct detached tracts of land; but in the Enterprise case, the two tracts of land involved were five miles apart, so that one of the tracts would necessarily have been a detached "province" of the other; whereas, in the present case, the lands involved were not detached and

distant, and were not noncontiguous in any sense except that they were deeply indented by a body of water, i.e., Biscayne Bay.*

*NOTE: Section 2943 of the Compiled General Laws of Florida of 1927, being codification of Chapter 1855, Acts of 1871, Paragraph 4, is as follows:

> "The jurisdiction of said cities and towns, and the authority of the officers thereof, shall be held to have full force and effect over the waters of all rivers, creeks, harbors or bays contained within the corporate limits."

QUESTIONS PRESENTED BY PETITIONERS.

The petitioners, in stating the questions presented, have in effect said:

FIRST: That the Circuit Court of Appeals, by declining to follow the (palpably erroneous) decision of the Florida Supreme Court in the case of Leatherman v. Alta Cliff Company, has decided an important question of local law in a way probably in conflict with applicable local decisions.

SECOND: That the Circuit Court of Appeals has decided an important question of general law in a way probably, untenable, and probably in conflict with the weight of authority.

In discussing these questions, we will denominate them "Point A" and "Point B", undertaking to show, without extended argument, that no question of local law is involved, and that the question of general law was correctly decided.

ARGUMENT.

Point A.

As the Alta Cliff case purports to follow, and to be founded upon, the earlier Mahood case, we will discuss the Mahood case first. There, the Supreme Court of Florida considered the question as to whether the petitioners' lands were properly included as a part of the municipality, in reviewing a judgment of ouster in a quo warranto proceedings; it was held that the Town was a legally constituted municipality under the laws of the state, but that Biscayne Bay, which indented the territory and in a large measure separated the western and eastern parts of the Town, was such a disconnection that if the inhabited and built-up portions of the Town were located on the west side of the Bay, it could not include the lands on the east side of the Bay.

As we feel unable to improve upon the analysis of the Mahood case made by the District Judge, in the light of the facts of the case at bar, we will quote from his opinion in the mandamus case, being **United States, ex rel. Brown-Crummer Investment Company v. Town of North Miami**, 11 Fed. Supp. 69. It is there said with respect to the Mahood case that:

> "The court evidently had in mind that the waters of Biscayne Bay was such a division that it could not be considered as being included in the town area and considered only the land as not being contiguous; that is, touching. The land bordered water and the whole area including the bay was within the area of the town. The court

says further: 'We are not prepared to say that the Legislature could not by proper enactment create a municipality embracing an area a part on one side and a part on the other side of a bay of this character, but in this case the Legislature has not attempted to do that.' The town however did, under general legislative authority, do that very thing. As hereinafter stated, the necessity for contiguous territory being within the corporate limits has been settled by the Florida Supreme Court in several cases. Town of Enterprise v. State, 29 Fla. 128, 10 So. 740; Mahood v. State, supra; Town of Boynton v. State, 103 Fla. 1113, 138 So. 639. With these decisions, I do not differ. A town cannot hop, skip, and jump over territory taking this piece of land and that piece of land without reference to a united whole. The question before me is whether lands in a duly and legally incorporated town under the provisions of sections 2935, 2937, 2942, and 2943, and other applicable sections of the Compiled General Laws of Florida 1927, under which Miami Shores, now North Miami, was incorporated, and which town did duly and legally issue municipal bonds, can be eliminated thereafter by judicial decree from the levy of a tax to pay a judgment secured upon said bonds on the ground that said lands never had been a part of the territory of said town because in the opinion of the court in construing the principle back of the statute said lands were not contiguous by reason of being separated by a body of water known as Biscayne Bay. **The contiguous tracts as dealt with by the Florida decisions were with reference to surveyed and plotted or legally described tracts of land absolutely separated by operation of law.** Biscayne Bay is a body of water. **It is not such a tract of land as the said court had under consideration in said cases.** Section 2937 of said statutes ex-

pressly says that when the municipal corporation is to be formed thirty days' notice by publicity must be given, 'requiring all persons who are registered voters, residing in the proposed corporate limits, **which shall be stated in this notice,** to assemble at a certain time and place to select officers and organize a municipal government.'

"It is admitted that this procedure was had as thus required. The east side of Biscayne Bay was included in the described territory. That is, the west side of Biscayne Bay and the east side were all taken into the town area as I understand the admission of the pleadings. Section 2943 says: **'The jurisdiction of said cities and towns, and the authority of the officers thereof, shall be held to have full force and effect over the waters of all rivers, creeks, harbors or bays contained within the corporate limits.'**

"In Lane v. State, 63 Fla. 220, 57 So. 662, 663, the court says: 'There is no constitutional provision regulating the statutory descriptions of municipal territory. * * * Under this broad authority it is within the power of the Legislature by valid enactments to prescribe the territorial limits of a municipality as it deems proper when no provision or principle of organic law is violated.'

"Under section 2937 aforesaid, the Legislature delegated this power to the municipality authorizing it in its organization notice to describe the corporate limits. When a town does this it is a legislative act. **No decision of the Florida courts has been cited, nor can I find any, dealing with an issue of municipal bonds under the conditions presented in this case.** While the lands involved in this case were thus included in the

organization notice of Miami Shores and before the decisions of the state court in Mahood v. State or the decree of the circuit court of Dade County, the bonds in question were duly issued after public notice and election. No protests were made by any of the property owners on the east side of the bay, either at the time of the organization of the town or at the time of the election and confirmation of the bond issue. Three years elapsed after the first issue and more than a year after the last issue and sale of said bonds before any objections were heard, and these came at the time when the owners of the bonds brought suit against the town for judgment on account of default in the payment of principal and interest and when judgment was entered. As set forth in the petition in this case, there is no allegation that there was any fraud in the proceedings or that the purchasers of the bonds were not bona fide. The purchasers of the bonds had a right to rely upon the existing statutes as aforesaid and upon the record of the said lands in question being within the town area and being part of the security back of the bonds. The property owners of the land in question had an opportunity to prevent by prompt action just what they are now seeking. The statute was in force giving power in the town to include the waters of the bay and the lands along the same. We judicially know that towns are constructed with large lakes and rivers and bays within their area and municipal facilities are constructed for the public utilization of and over said waters. Of two innocent parties, bondholders and east side land holders, which shall suffer the loss; which one had the opportunity to prevent the present situation and to protect their rights and neglected to do so causing the court to act? We can only answer that

it was the owners of the lands in question. Furthermore, the bond issue was validated by decree of the state court after due notice and hearing. Further by legislative act approved June 8, 1929 (Sp. Acts Fla. 1929, c. 14237), the bond issue was confirmed, by inference at least. The municipality has received the money for the sale of these bonds and spent it for municipal purposes. The Florida Supreme Court, in State ex rel. Nuveen v. Greer, 88 Fla. 249, 102 So. 730, 742, 37 A.L.R. 1298, in considering invalid municipal bonds, says: 'The bonds were expressly authorized by statute and were issued as required by the statute. The proceeds were received by the municipality and used for its benefit. The implied limitation that was held by the court to make the issue of the bonds contrary to organic law, was developed by judicial interpretation after the bonds had been sold, and the money had been used by the city for its purposes as expressly and specifically authorized by the statute. These circumstances clearly render the municipality liable for the amount of the money so received by it, with interest.' Undoubtedly mandamus would lie to compel a city to pay a judgment under this doctrine.

"The limitation on Miami Shores as to the land east of Biscayne Bay being beyond its power to include has been developed by judicial interpretation after the bonds had been issued and the money therefor used. The argument of the court in the above case applies with equal force to the facts in this case. 'The obligation to do justice rests upon all persons, natural and artificial, and if a county obtains the money or property of others without authority, the law, independent of any statute, will compel restitution or compensation.' Marsh v. Fulton County, 10 Wall. (77 U. S.) 676, 684, 19 L. Ed. 1040; Louisiana v.

Wood, 102 U. S. 294, 299, 26 L. Ed. 153. I am aware that the circuit court of Dade county, Fla., pursuant to a mandate of the Florida Supreme Court in Mahood v. State, 101 Fla. 1254, 133 So. 90, has decreed that the lands in question never were within the area of the town of Miami Shores or North Miami. I cannot agree with this in so far as to deny liability in this mandamus suit. At the time of the bond issue they were included as I have set forth. On the strength of this inclusion the bonds were sold to bona fide purchasers.

"Counsel for respondents urge the decree of the state court as being res adjudicata of the question presented and that the court must follow the same. I do not think so. **We are dealing here with a question of general jurisprudence, of commercial law—dealing with municipal securities and the rights of bondholders.** General law must decide the issue. The law of estoppel operates in justice against the respondents. The federal court is not bound by the state decision. Under the circumstances **none of the state cases presented deal with the rights of bondholders under the conditions presented.**

"'It is an axiom in American jurisprudence that a statute is not to be pronounced void upon the ground that it is in conflict with the constitution of a State, unless the repugnancy to the Constitution be clear and the conclusion that it exists inevitable.' Every doubt is to be reserved in support of the enactment, * * *. The judicial function involving such a result is one of delicacy and to be exercised always with caution * * *

"'With all respect for the eminent tribunal

by which the judgments were pronounced we must be permitted to say that they are not satisfactory to our minds, * * * The question before us belongs to the domain of general jurisprudence. In the class of cases the court is not bound by the judgment of the court by the State where the case arises. It must hear and determine for itself. Here commercial securities are involved. When the bonds were issued there had been no authoritative intimation from any quarters that such statute was invalid, * * * the acquiescence was universal * * *

"'The National Constitution forbids the States to pass laws impairing the obligation of contracts. In cases properly brought before us that end can be accomplished, unwarrantably no more by judicial decisions than by legislation. Were we to yield in cases like this to the authority of the decisions of the Courts of the respective States, we should abdicate the performance of one of the most important duties with which this tribunal is charged and disappoint the wise and salutary policy of the framers of the Constitution in providing for the creation of an independent Federal judiciary.' Township of Pine Grove v. Talcott, 19 Wall. (86 U. S.) 666, 22 L. Ed. 227; Board of Com'rs of Stanly County v. W. N. Coler & Co., 190 U. S. 437, 23 S. Ct. 811, 47 L. Ed. 1126; Folsom v. Township, 159 U. S. 611, 16 S. Ct. 174, 40 L. Ed. 278; Burgess v. Seligman, 107 U. S. 20, 2 S. Ct. 10, 27 L. Ed. 359; Herron v. S. P. Co., 283 U. S. 91, 51 S. Ct. 383, 75 L. Ed. 857.

"The doctrine of the federal courts in cases of this character is expressed in Bourbon County v. Block, 99 U. S. 686, 699, 25 L. Ed. 491: 'We have not overlooked the opinion delivered by

> the Supreme Court of the State in Lewis v. Commissioners, supra (12 Kan. 186). The judgment in the case was not given until after the bonds were issued, and after the rights of the holders thereof had become fixed. We are, therefore, at liberty to follow our own convictions of the law. To those expressed by the State court we cannot assent. They are not in harmony with many rulings of this court made and respected through a long series of years, and they are not such as in our opinion would administer substantial justice if applied to this case.' Board of Com'rs of Comanche County v. Lewis, 133 U. S. 198, 10 S. Ct. 286, 33 L. Ed. 604."

The Supreme Court of Florida did not hold, in the Mahood case (as petitioners apparently contend) that a de facto municipal corporation could not exist with corporate limits extending to and including territory on each side of Biscayne Bay. Further, it did not hold that a de jure corporation could not exist including territory on both sides of the Bay. This is very clearly pointed out in the principal opinion of the Circuit Court of Appeals, which the petitioners are asking this Court to review. It is there said:

> "The Supreme Court of Florida has not held in the cases cited that if, as a matter of fact, the territory on both sides of the Bay was a part of the hamlet before it was incorporated, it could not be incorporated as a town. Indeed, in the Mahood case it decided the contrary to this. **It definitely held that whether the affected territory was or was not a part of the town, was to be determined as an issue of fact and not of law."**

In the Mahood case, the trial court first determined that the town was a de facto municipality throughout its entire territory, and a general judgment of ouster was entered. The Supreme Court of Florida reversed that judgment, however, holding, in effect, that the town was a de jure corporation as to the mainland, or parts thereof, and a de facto corporation as to the peninsula or beach area (petitioners' lands), if the inhabited and built-up portions of the town did not extend beyond the mainland. Subsequently, the trial court determined that the lands on the peninsula were not within the inhabited and built-up portions of the town, and entered judgment of ouster in accordance with the mandate of the Florida Supreme Court.

However, in the Alta Cliff case, decided several years later, the Florida Supreme Court held that the judgment of ouster entered in the lower court had a retroactive effect, and established that the lands lying east of Biscayne Bay had never been a part of the municipality for any purpose. The Alta Cliff case was decided wholly upon the Mahood case, and the general law with respect to de facto corporations, previously recognized as obtaining in Florida in the Town of Enterprise case, was wholly disregarded.

Petitioners now assert that the Circuit Court of Appeals has decided an important question of local law in a manner probably in conflict with applicable local decisions. Their contentions in this regard are, however, manifestly unsound. First, no question of local law is involved in this case as has been clearly demonstrated in the opinions of the District Court and of the Circuit Court of Appeals. Second, if the Circuit Court of Ap-

peals had attempted to follow the Florida case of **Leatherman v. Alta Cliff Company,** its decision would have been in conflict with Florida cases, for the Alta Cliff case itself conflicts with both earlier and later decisions of the Florida Supreme Court. We have already pointed out the conflict between the Alta Cliff case and the earlier Town of Enterprise case. We now refer to the later case of **State ex rel. Landis, Attorney General, v. Pravatt,** (Fla.) 148 So. 578, 580, from which we quote the following:

> "'Quo Warranto' is defined by Blackstone (3 Com. 262) to be 'in the nature of a writ of right for the King against one who claims or usurps any office, franchise or liberty, to inquire by what authority he supports his claim, in order to determine the right.' **and this definition clearly imports the limitations and extent of the remedy.**
>
> "In the instant case the information was filed against the defendants as individuals, for exercising the office, franchise, or privilege of Board of Trustees of Volusia County Fair, and not against the corporation as such. In cases where the action is brought against individuals, usurping or intruding into any office or franchise, or of unlawfully holding the same, a judgment of ouster should be rendered; but where the proceeding is against a corporation, and a conviction follows for nonuser, misuser, or long neglect of a liberty, franchise, or privilege, it appears that a judgment of ouster and dissolution should be rendered, which is equivalent to a judgment of seizure at common law. 22 R. C. L. 724. In King v. City of London, 2 T. R. 522, the rule is stated to be this: **When it clearly appears to a court that a liberty is usurped by wrong and**

upon no title, judgment of ouster only shall be entered. But when it appears that a liberty has been granted, but has been misused, judgment of seizure into the King's hands shall be given. 51 C. J. 361 states the rule to be: **'Under its common-law powers, the court in granting relief against one exercising an office, will go no further than to oust the wrongful possessor of the office.' * * *

" * * * The only question to be determined by this action is whether the defendants are usurping a liberty, franchise, or privilege, without authority of law. This limitation of the scope and extent of the relief afforded in the proceedings in the nature of quo warranto was sustained in Albright v. Territory, 13 N. Mex. 64, 79 P. 719, 11 Ann. Cas. 1165, and State ex inf. Pope ex rel. Oberholser v. Mansfield Special Road District, 299 Mo. 663, 253 S. W. 714."

Further, we mention that in the case of **West v. Town of Lake Placid**, 97 Fla. 127, 120 So. 361, the Supreme Court of Florida made a ruling with which the Alta Cliff case conflicts. In the West case it was said:

"In this instance, however, acting under at least color of authority from the Legislature found in the passage of Chapter 12990, supra, **this municipality apparently in good faith has taken the necessary steps to put its charter into operation, has elected its officers, has assumed the duties of local government under its charter, and has otherwise engaged in an active user of the franchise—all of which has been acquiesced in by the inhabitants of the municipality until the institution of this proceeding. Thus the municipality has become at least a municipality de facto.**

> Tulare Irr. Dist. v. Shepard, 185 U. S. 1, 22 S. Ct. 531, 46 L. Ed. 773; Town of Constitution v. Chestnut Hill Cemetery Association, 136 Ga. 778, 71 S. E. 1037; Cooper v. Town of Valley Head, 212 Ala. 125, 101 So. 874; 43 C. J. 98."

As there existed in Florida no constitutional impediment to the creation of a town extending to both sides of a body of water, and as the town in the present case was organized in good faith under color of law, we submit that it became a de facto municipal corporation as to all of the territory included within its original limits, and that the District Court and the Circuit Court of Appeals committed no error in declining to follow the Alta Cliff case.

The Alta Cliff case did not involve the rights of bondholders. Petitioners say, nevertheless, that the Circuit Court of Appeals should have followed it and should have reversed the decree of the District Court. They are wholly unmindful, however, of the fact that the Florida Supreme Court refused to follow the Alta Cliff case in a suit involving rights of bondholders, and expressly declared that a prior judgment of ouster was not retroactive and could not affect the bondholders' rights. We refer to the recent case of State, ex rel. Fidelity Life Association v. City of Cedar Key, 165 So. 672, from which we excerpt the following:

> "The judgment in quo warranto relied on as a defense in this case must therefore be construed as having been rendered by the circuit court in the light of section 5109, C.G.L., supra, and as not having any legal effect as an avoidance of the obligations validated or as an ob-

stacle to the ordinary remedies available to a holder thereof for their enforcement against the municipality obligor thereon.

* * * *

"The present writ of mandamus runs to the officers who would be required to execute the acts commanded to be done by them had the quo warranto judgment ousting them as officers of the city of Cedar Key never been obtained. **Such quo warranto judgment, as we have seen, must be construed as having a prospective operation only, in so far as past incurred and duly validated municipal bonds of the ousted or dissolved municipal corporation is concerned**; no claim being made that the bonds in question are beyond the constitutional power of the state Legislature to authorize on the part of the municipality in any circumstances by mere legislation. The judgment in the quo warranto proceeding is to be presumed, as a matter of law, not to call in question matters expressly or impliedly settled or adjudicated in the bond validation proceeding, the result of which, under section 5109, C.G.L., section 3299, R.G.S., could not be subsequently called into question indirectly in any Florida court, whether by means of a quo warranto suit or otherwise, instituted in the name of the state, or in the name of any other party bound by the decree of validation through actual or virtual representation in that cause."

Petitioners further, in their brief, assert that the Circuit Court of Appeals was bound by the Alta Cliff decision under authority of **Hawks v. Hamill**, 288 U. S. 52, 53 S. Ct. 240, 77 L. Ed. 610. They apparently overlooked the fact that the Court there, speaking through Mr. Justice Cardozo, stated:

> **"No controversy is here as to the impairment of the obligation of a contract in violation of the restraints of the Federal Constitution."**

whereas the case at bar does involve the impairment of the obligation of contracts, and a violation of the provisions of the Federal Constitution.

Manifestly, if the Circuit Court of Appeals had followed the Supreme Court of Florida in the Alta Cliff case, it would have been led into error.

Point B.

In discussing the preceding question, we have necessarily dealt with general law as well as local law. We will, accordingly, confine our argument of the second point to citing **Corpus Juris**, Volume 51, page 361, paragraph 84, as follows:

> "In a proceeding against a corporation the court may enter a judgment of ouster as to the corporate franchise, **or merely as to particular powers**; and if the corporation is dissolved the court may order incidentally that the officers shall no longer exercise the functions of their offices; **but the forfeiture of the franchise of the corporation and the ouster of its officers from the exercise of official power constitute the limits of the relief which may be granted.**"

and to mentioning **Cooley's Constitutional Limitations**, Vol. 1, page 598, as follows:

> "It has been held that where a statute authorized a municipal corporation to issue bonds and

to exercise the power of legal taxation in order to pay them and persons bought and paid value for bonds issued accordingly, this power of taxation is part of the contract and cannot be withdrawn until the bonds are satisfied that an attempt to repeal or restrict it by statute is void, and that unless the corporation imposes and collects the taxes in all respects as if the subsequent statute had not been passed, it will be compelled to do so by mandamus."

So far as we have been able to determine, the general law does not support the contentions of the petitioners.

THE DISSENTING OPINION.

The petitioners have stated in their brief that Circuit Judge Sibley, in his **partially** dissenting opinion, took the view that the Circuit Court of Appeals was bound by the decision of the Florida Supreme Court in Leatherman, et al. v. Alta Cliff Company, "because that decision was one interpreting Florida statutes respecting the powers and duties of municipal officers—creatures of state statutes whose source of power is the state statutes". We do not believe Judge Sibley's partially dissenting opinion can be properly so construed.

Judge Sibley's dissent was on the ground that it would be inequitable to charge the lands of the petitioners with their proportionate part of the bonded debt, according to value, as the proceeds from the sale of the bonds had been used, principally, to construct a Town Hall situated on the mainland, and that comparatively little of the proceeds had been used for permanent im-

provements on the lands east of the Bay. He apparently lost sight of the fact that the petitioners had an opportunity to object to the validation and sale of the bonds, while their lands were included within the corporate limits of the municipality, and at a time when the uses to which the proceeds would be put were known to them. Further, Judge Sibley apparently did not take into account the undisputed evidence that the taxes collectible on the lands west of the Bay have been hardly adequate to pay the Town's necessary administration expenses, and hence nothing has been paid on the bonds, with the result that their obligations have been impaired.

The evidence disclosed, conclusively, and without dispute, that the lands east of the Bay, by reason of their location, are highly valuable, but that the lands west of the Bay, which are mainly unimproved, are of little value. The record also discloses that the owners of the highly valuable property east of the Bay were willing to have their property included in the Town during the boom period, but that when the bubble burst, they sought to evade responsibility for the obligations of the municipality, by having their lands excluded, thereby casting the burden upon the owners of property on the mainland, which, we submit, would work great injustice.

CONCLUSION.

The record in this case very clearly shows that the Circuit Court of Appeals did not err in affirming the judgment of the District Court, because:

1. The decisions of the Supreme Court of Florida,

upon the points of law involved in this case, are in conflict.

2. The Circuit Court of Appeals was not bound to attempt to follow the decisions of the Florida Supreme Court, in this case, for that this controversy involves the impairment of the obligation of contracts in violation of the restraints of the Federal Constitution.

3. The Circuit Court of Appeals did follow the decision of the Supreme Court of Florida in the case of State ex rel. Fidelity Life Association v. Cedar Key, and would have fallen into error had it attempted to follow the earlier Florida decision in the case of Leatherman v. Alta Cliff Company.

4. It is not shown that the Circuit Court of Appeals has decided any important question of general law in a way probably untenable and in conflict with the weight of authority, and it affirmatively appears that the decision of the Circuit Court of Appeals is not in conflict with any of the decisions cited by petitioners, except the case of Leatherman v. Alta Cliff Company, which last mentioned decision was clearly erroneous and entirely out of harmony with other decisions of the Supreme Court of Florida, as well as the weight of authority elsewhere.

5. The decisions of the District Court and of the Circuit Court of Appeals are in accordance with the laws of the State of Florida as a whole, and also the general law.

6. The evidence amply supports the findings and decree of the District Court, and the law amply supports

the ruling of the Circuit Court of Appeals.

It is, therefore, respectfully submitted that the petition for writ of certiorari in this case should be denied. All of which is respectfully submitted.

.....

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Supreme Court of the United States

OCTOBER TERM, 1936

[redacted] 10

OCEAN BEACH HEIGHTS, INC., A CORPORATION; NORMANDY BEACH DEVELOPMENT COMPANY, A CORPORATION; LUCILLE F. ENSIGN AND HER HUSBAND, WALTER C. ENSIGN, AND TATUM'S OCEAN PARK COMPANY, A CORPORATION,

Petitioners,

vs.

THE BROWN-CRUMMER INVESTMENT COMPANY, A KANSAS CORPORATION, AND TOWN OF NORTH MIAMI, A MUNICIPAL CORPORATION; DANA W. ROBBINS, AS MAYOR OF SAID TOWN, J. H. GRIBBLE AS TAX COLLECTOR AND TAX ASSESSOR OF THE SAID TOWN, MRS. E. MAY AVIL AS CLERK AND TREASURER OF THE SAID TOWN, AND E. C. HARNER, MRS. CECILLE SEVIER, MRS. ELLA F. KLEFEKER, D. D. AVIL AND H. W. JONES AS MEMBERS OF THE TOWN COUNCIL OF SAID TOWN,

Respondents.

BRIEF OF RESPONDENT

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Jacksonville, Florida,
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Supreme Court of the United States

OCTOBER TERM, 1936

787

OCEAN BEACH HEIGHTS, INC., A CORPORATION; NORMANDY BEACH DEVELOPMENT COMPANY, A CORPORATION; LUCILLE F. ENSIGN AND HER HUSBAND, WALTER C. ENSIGN, AND 'TATUM'S OCEAN PARK COMPANY, A CORPORATION,

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THE BROWN-CRUMMER INVESTMENT COMPANY, A KANSAS CORPORATION, AND TOWN OF NORTH MIAMI, A MUNICIPAL CORPORATION; DANA W. ROBBINS, AS MAYOR OF SAID TOWN, J. H. GRIBBLE AS TAX COLLECTOR AND TAX ASSESSOR OF THE SAID TOWN, MRS. E. MAY AVIL AS CLERK AND TREASURER OF THE SAID TOWN, AND E. C. HARNER, MRS. CECILLE SEVIER, MRS. ELLA F. KLEFEKER, D. D. AVIL AND H. W. JONES AS MEMBERS OF THE TOWN COUNCIL OF SAID TOWN,

Respondents.

BRIEF OF RESPONDENT

GILES J. PATTERSON,
Jacksonville, Florida,
Solicitor for Respondents.

REASONS GIVEN BY PETITIONER

The reasons given by the Petitioner why a writ of certiorari should be issued by this Court are that:

1. The Circuit Court of Appeals, in the majority opinion, by refusing to follow the Florida case of *Leatherman et al. v. Alta Cliff Company*, has decided an important question of local law in a way probably in conflict with applicable local decisions.

2. The Circuit Court of Appeals, in the majority opinion, has decided an important question of general law in a way probably untenable and in conflict with the weight of authority.

The Respondent objects to the issuance of the writ of certiorari and asserts that the decision of the Circuit Court of Appeals is in strict conformity with decisions of the Florida Court and with the decisions of the Federal Courts. The real complaint here is that the Circuit Court of Appeals did not regard the *Alta Cliff* case as decisive. It did not do so because the Florida Court in a later decision did not so regard it.

AS TO THE FIRST REASON.

THE CIRCUIT COURT OF APPEALS, IN THE MAJORITY OPINION, BY REFUSING TO FOLLOW THE FLORIDA CASE OF LEATHERMAN ET AL. V. ALTA CLIFF COMPANY, HAS DECIDED AN IMPORTANT QUESTION OF LOCAL LAW IN A WAY PROBABLY IN CONFLICT WITH APPLICABLE LOCAL DECISIONS.

Respondent asserts that the opinion of the majority of the Circuit Court of Appeals is not only not in conflict with but conforms fully to "*applicable* local decisions."

(a) To support this assertion we submit that the opinion of the majority of the Circuit Court of Appeals approves the

decision of the Supreme Court of Florida in *Mahood* v. *State ex rel Davis*, 101 Fla. 1254, 133 So. 90, when it said:

> "The Supreme Court of Florida correctly held, of course, that the statute under which the Town was incorporated was one for self incorporation and not for the conquest of territory. * * * We think it clear then that if, as a matter of fact, as was found in the ouster case, while the property east of the Bay was embraced within the corporate limits, it was not prior to the incorporation a part of the settlement or community incorporated, it could not by the acts done have been made a part of it de jure."

(b) We submit that it conformed to the holding of the Florida Supreme Court in the same case further when it said:

> "The Supreme Court of Florida has not held in the cases cited that if, as a matter of fact, the territory on both sides of the Bay was a part of the hamlet before it was incorporated, it could not be incorporated as a town. Indeed, in the Mahood case, it decided the contrary of this."

(c) The decision of the Circuit Court of Appeals conformed to the "*applicable decisions*" of the Supreme Court of Florida when it held:

> "We agree with appellees that *the judgment in the ouster suit spoke only as to the future*, determined only that from and after the ouster the Town did not exist de jure in the excluded territory. We agree with them, too, that, while the judgment in that proceeding prevented the Town from imposing any new obligations on and from exercising any further general jurisdiction over it, as a judgment it was without effect upon obligations already fixed and existing against that territory."

because the Florida Court in the case of *State ex rel Fidelity Life Association* v. *Cedar Key*, 122 Fla. 454, 165 So. 672, de-

cided on the 6th day of February, 1936, a suit by a bondholder to enforce a tax levy, held:

> *"Such quo warranto judgment,* as we have seen, *must be construed as having a prospective operation only, in so far as past incurred and duly validated municipal bonds of the ousted or dissolved municipal corporation is concerned;* * * * The judgment in the quo warranto proceeding is to be presumed, as a matter of law, not to call in question matters expressly or impliedly settled or adjudicated in the bond validation proceeding."

(d) The decision of the Circuit Court of Appeals conformed to the holding of the Florida Supreme Court when it held:

> "We think it plain that, under the facts as they appear in the record, of a good faith attempt at incorporation, of user of, and acquiescence in the exercise of corporate power, *a de facto corporation was created as to the territory east of the Bay, and that it is bound for the payment of the bonds in question.*"

because the Supreme Court of Florida in the case of *State ex rel Fidelity Life Association* v. *Cedar Key, supra,* held that even though the act incorporating the City of Cedar Key was void it

> *"was at least a de facto municipal corporation whose status as a putative de jure corporation had not been duly challenged by the State of Florida at the time the city's bonds and coupons were floated and sold"*

and granted a writ of mandamus to compel the levy of a tax to pay them.

Petitioner (page 9) attempts to avoid the effect of the decision of the Florida Court in the *Cedar Key* case, *supra,* by claiming that the Supreme Court of Florida, in the last paragraph of that opinion, "saved the rights of individual property owners who might be able to show that their lands were never *lawfully included in the city*". They say "what we have

here is just exactly what the Supreme Court of Florida referred to in the concluding paragraph of its opinion, namely, individual property owners setting up that their lands never were lawfully in the Town of North Miami, and they are supporting their contention with the *Alta Cliff* case, precisely in point." But the last paragraph of the opinion of the Florida Court in the *Cedar Key* case did not hold what Petitioner claims; on the contrary, it said in that paragraph:

> "It follows that the respondent officials of the city of Cedar Key should be ordered to exercise the corporate functions commanded of them by the alternative writ, the ouster judgment, relied on as a defense, to the contrary notwithstanding, and that if any question of territorial boundary for the application of the taxing power commanded to be exercised on the part of the de facto municipal corporation of the city of Cedar Key should arise, that it should be duly adjudicated at the instance of such individual complainants *as may be able to prove that they were at no time ever within the orbit of the respondent municipality's exercise of corporate jurisdiction as an actually functioning de facto municipality claiming to be the city of Cedar Key prior to the judgment of ouster.*"

We submit that the opinion of the Court of Appeals fully conforms to the quoted holding because it held:

> "It is without dispute in the evidence that, from the time of its formation until the ouster proceeding, *the Town exerted jurisdiction over the whole territory.* * * * It levied and collected taxes from it. It was understood by all concerned that it extended over it. *It did, in fact, though not in law, so extend.*"

The District Judge found as a matter of fact that the lands east of the Bay were within the orbit of the respondent municipality's exercise of corporate jurisdiction as an actually functioning de facto municipality claiming to be the city prior to the judgment of ouster. Such finding of fact is conclusive.

The Florida Court would, therefore, have applied the same rule in this case that it applied in the *Cedar Key* case.

As this suit is brought by bondholders against the municipality the "applicable" decisions of the Florida Court, which are to be looked to, are only those rendered in suits brought by bondholders against municipalities upon bonds issued prior to the institution of ouster proceedings, and not decisions rendered by the Florida Court in ouster proceedings brought by the State, or suits brought by taxpayers against the City and to which bondholders were not parties. The Supreme Court of Florida has itself applied an entirely different rule in the two classes of cases. A Federal Court will not follow a decision made by the Supreme Court of Florida in a quo warranto suit or one made in a suit brought by a taxpayer based solely upon a decree of ouster in a quo warranto proceeding, in a suit brought by a person holding bonds issued by a municipality in good faith before any proceeding in quo warranto was begun, when the Florida Supreme Court itself would not do so.

Another illustration of the view of the Florida Court is found in the dissenting opinion of Judge Buford in *State* v. *City of Coral Gables*, 114 Fla. 326, 154 So. 234. He said:

> "The question as to whether or not the city may continue to levy and collect taxes on this particular property in so far as the same may be required to be levied against that property to produce a fund to pay principal and interest on bonded indebtedness created without objection on the part of the landowner while the lands were included within the city of Coral Gables could not here be adjudicated because the rights of bondholders or the holders of other municipal obligations so created are not at issue in this case."

In fact, the Circuit Judge of Dade County who issued the writ of quo warranto against the Town of Miami Shores in an opinion (p. 334 Tr.) said:

> "It may be that the de facto municipal corporation of Miami Shores is indebted by bond issues or otherwise, but there are ample provisions by law and in equity to take care of such matters, and ultimately, if necessary, legislation may be sought to enforce the debts of said town which are by no means discharged by this ruling."

Incidentally, this Court should consider the fact that the Circuit Court of Appeals in *City of Winter Haven et al.* v. *J. W. Gillespie et al.*, 84 Fed. (2d) 285, decided this same question of Florida law in the same manner.

The effort of Petitioner to show a conflict of decisions between State and Federal Courts is misleading as shown by the quotations from the opinions.

AS TO THE SECOND REASON.

> THE CIRCUIT COURT OF APPEALS, IN THE MAJORITY OPINION, HAS DECIDED AN IMPORTANT QUESTION OF GENERAL LAW IN A WAY PROBABLY UNTENABLE AND IN CONFLICT WITH THE WEIGHT OF AUTHORITY.

It is impossible to determine from the Petition and Brief what question of "general law" it claims was decided by the Court "in conflict with the weight of authority".

If it be contended that the decision of the Circuit Court of Appeals that property, which was within the putative boundaries of a town incorporated in good faith, is subject to the taxing power of the Town authorities which may be exercised for the purpose of providing for the debt service contracted for by said town during the time when the validity of the action of the town including such territory had not been questioned and during which time the town had exercised in good faith its municipal powers over such area, neither Petition nor Brief cites a decision of any Court which has held to the contrary.

On the other hand, there are at least two decisions of the Federal Courts which directly support the decision of the Court of Appeals—*Speer* v. *Board of County Commissioners*, 88 Fed. 749, and *Clapp* v. *Otoe County*, 104 Fed. 473, where certion was denied by this court. We quote the following from the latter decision:

> "When these bonds were issued and sold, every citizen of the territory comprised within the order of October 4, 1886, and called 'Nebraska City Precinct' and every piece of property therein, was represented by the Board of County Commissioners of Otoe County, in all the proceedings which culminated in the issue of these bonds. That board was the agent of these citizens and this property, under the statutes, to borrow the money which they voted to obtain upon the bonds. Under the color of law, it constituted the precinct, called the election, issued the bonds, and no man objected. Under these circumstances, Nebraska City precinct was a precinct de facto, and the board of county commissioners were its governing officers de facto, and the silence and general acquiescence of the private citizens within it and the officers of the state and county, until after the rights of the bondholders had vested, estop them from questioning the existence of the precinct, or the validity of the acts of these officers, as against the purchasers of the bonds. The acts of these officers have all the force of the acts of officers de jure for a precinct legally constituted, and the owners of the property within the boundaries of the order of the board of county commissioners of October 4, 1886, are estopped, by their silence and acquiescence, from denying that the property within those limits is liable to taxation to raise the necessary amount to pay these bonds."

There are no Federal decisions to the contrary.

If complaint is made against the holding of the Court of Appeals that:

> "We think it plain that, under the facts as they appear in the record, of a good faith attempt at incorporation, of

> user of, and acquiescence in the exercise of corporate power, a defacto corporation was created as to the territory East of the Bay, and that it is bound for the payment of the bonds in question."

we submit that this holding is supported by the decisions of the Supreme Court of Florida in *West* v. *Town of Lake Placid*, 97 Fla. 127, 120 So. 361; *State ex rel Landis et al.* v. *City of Coral Gables*, 120 Fla. 492, 163 So. 308, and also by the numerous cases cited by the Circuit Court of Appeals.

Whether a corporation exists de facto is a question of fact, assuming that there was a valid act authorizing the incorporation. The validity of the statute under which the Town of Miami Shores was organized is not questioned by Petitioner.

The Petition and Brief contend that the decision of the Circuit Court of Appeals is based on acquiescence or estoppel. This is a misconstruction of the opinion and overlooks the fact that acquiescence is material in this case only as an *element of proof that the de facto corporation* did include lands east of the Bay. The doctrine of de facto corporations is entirely separate from, and in no way connected with, estoppel to deny corporation existence. The question of whether a de facto corporation exists involves three essentials:

1. The existence of a law under which a corporation is possible.

2. An effort in good faith to incorporate.

3. A user of corporate powers.

See Fletcher Cyclopedia Corporation, Vol. 8 (Per. Ed.), page 71.

1. The Supreme Court of Florida held that the statute authorizing incorporation was Constitutional. See quotations in the opinion of the Circuit Court of Appeals.

2. It is admitted by the Petitioners that the effort to incorporate was in good faith and in accord with the provisions of the statute.

3. Both the District Judge and the Circuit Court of Appeals have held, as a matter of fact, that the undisputed evidence shows that from the time of its formation until the ouster proceeding, the town exerted jurisdiction over the whole territory, including the area east of the Bay.

Fletcher Cyclopedia Corporations, Vol. 8 (Per. Ed.), page 65, says:

> "So long as it exists, a de facto corporation is a reality and has a substantial, legal existence, and an independent status, recognized by the law. * * * It is * * * a corporation and enjoys, at least for most purposes, the status of a corporation de jure until the state questions its existence."

and on p. 179-80:

> "Ordinarily a de facto corporation, in its relation with all persons except the state, has the same powers, and is subject to the same liabilities, duties and responsibilities, as a corporation de jure" * * * and may "legally do and perform every act and thing which the same entity could do or perform were it a de jure corporation. As to all the world except the paramount authority under which it acts and from which it receives its charter, it occupies the same position as though in all respects valid, and even as against the state, except in direct proceedings to arrest its usurpation of power, its acts are to be treated as efficacious."

> "The doctrine of de facto corporations applies to municipal corporations."

> Fletcher Cyclopedia Corporations, Vol. 8, (Per. Ed.) page 68.

Under the admitted facts and this undisputed principle of law, rights could and did accrue against the de facto corporation by reason of the contracts executed by it. Acquiescence of the property owners, not alone, but with other proven facts of the exercise of corporate jurisdiction over the entire territory, established the existence of a de facto corporation and its legal liability under its contracts necessarily follows.

See discussion of this in Clapp v. Otoe County, supra.

While not necessary here, we call attention to an erroneous statement of Judge Sibley. In his dissenting opinion he says that "one large landowner, a defendant, resisted always and by litigation". The defendant refered to is the Petitioner here. Yet, according to the testimony of its own counsel (p. 140 Tr.), Petitioner did not purchase its property in the Town *until June, 1929;* more than a year after the bonds of the Town had been issued and more than three years after the Town had been incorporated. It purchased with full knowledge that its lands were within the boundaries of the Town. Plaintiff's Exhibit No. 5 (pp. 237-242 Tr.) shows that Mr. Sutherland, who is counsel here for Petitioner, appeared before the Town Council and requested the passage of Resolution No. 391, authorizing a change in location of Collins Avenue. In fact, Resolution No. 393, passed May 13, 1929 (pp. 240-242 Tr.) expressly recites that the purchase of lands by the Petitioner was *contingent upon the consent of the Town Council* and of the County Commissioners to the re-location of Collins Avenue and that such re-location would result in "improvements being erected thereon to the value of five to ten million dollars". (p. 241 Tr.)

Moreover, Plaintiff's Exhibit No. 2 (pp. 211-223 Tr.) specifically alleges that the lands described therein, including

Government Lots 1, 2, and 3 of Section 26, Township 52 South, Range 42 East, which includes the property of Petitioners, were "situate in the Town of Miami Shores".

CONCLUSION

We submit that the decision of the Circuit Court of Appeals follows decisions of the Supreme Court of Florida relating to the rights of holders of bonds which were issued by a municipal corporation before action was taken by the State of Florida to question the validity of the organization of the Town. The Supreme Court of Florida, having held that lands within the orbit of a de facto Town's exercise of corporate jurisdiction as a functioning municipality prior to the judgment of ouster, remain subject to the levy of taxes for the payment of debts incurred by the municipality prior to the judgment of ouster, it was the duty of the Federal Court to hold the same. The Court of Appeals' opinion and decision are in accord with Federal and other Court decisions. The rule invoked by Petitioner does not require Federal Courts to follow a decision of a State Court made in a suit to which this Respondent was not a party and where the facts were different.

The rights of Respondent arise out of the fact that the de facto municipal corporation of Miami Shores in good faith incurred obligations which were validated by the Circuit Court before any proceeding of ouster was filed and that under those circumstances lands which were within the orbit of the jurisdiction of the de facto corporation remain subject to the levy of taxes for the payment of such debts to the same extent as if they had been de jure a part of the Town. Such is the established law of the State of Florida and of Courts of

other States without exception. Petitioner has not, in either Petition or Brief, cited a single case holding to the contrary.

The nature of the proceeding and the form of the decree in this case are drawn in conformity with those affirmed by the Eighth Circuit Court of Appeals in *Fetzer v. Johnson*, 15 Fed. (2d) 145, where this Court denied a writ of certiorari.

Respectfuly submitted,

GILES J. PATTERSON,

Solicitor for Respondent,
Brown Crummer Investment Company.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937.

No. 10.

OCEAN BEACH HEIGHTS, INC., NORMANDY BEACH DEVELOPMENT COMPANY, ET AL., PETITIONERS,

VS.

THE BROWN-CRUMMER INVESTMENT COMPANY, TOWN OF NORTH MIAMI, ET AL., RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF OF TOWN OF NORTH MIAMI, ET AL., RESPONDENTS, OTHER THAN THE BROWN-CRUMMER INVESTMENT COMPANY.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937.

No. 10.

OCEAN BEACH HEIGHTS, INC., NORMANDY BEACH DEVELOPMENT COMPANY, ET AL., PETITIONERS,

VS.

THE BROWN-CRUMMER INVESTMENT COMPANY, TOWN OF NORTH MIAMI, ET AL., RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF OF TOWN OF NORTH MIAMI, ET AL., RESPONDENTS, OTHER THAN THE BROWN-CRUMMER INVESTMENT COMPANY.

I.

OPINIONS BELOW.

The questions passed on by the Circuit Court of Appeals in the decision of which the petitioners for certiorari now complain, were first presented to the

United States Circuit Court of Appeals in the case of *Normandy Beach Development Company* v. *United States ex rel. Brown-Crummer Investment Company,* 69 Fed. (2d) 105. The Court dismissed the appeal, however, without passing on the questions involved. Although the dismissal of the appeal had the practical effect of affirming the judgment below, the judgment-plaintiff was unable to enforce the judgment without the aid of a court of equity, and the chancery suit, with which the Court is now concerned, was subsequently brought. The present petitioners moved to dismiss the bill of complaint in the District Court, but their motion was denied, as will appear from *Brown-Crummer Investment Company* v. *Town of North Miami, et al.,* 11 Fed. Supp. 73. After final decree against the present petitioners, the appeal to the Circuit Court of Appeals for the Fifth Circuit, was entered, and the lower court was affirmed. The opinion of the Circuit Court of Appeals is reported at pp. 978-981 of 87 Fed. (2d).

The opinion of the District Judge on the final hearing has not been reported but appears at pp. 378-389 of the transcript of the record, and refers to his former opinion in the mandamus proceedings by the *United States ex rel. Brown-Crummer Investment Company* v. *Town of North Miami; et al.,* reported at p. 73 of 11 Fed. Supp.

II.

STATEMENT OF THE CASE.

The "Statement of the Case" in petitioners' brief is not satisfactory, in that, it contains certain inaccuracies and omits certain facts that are deemed material to the consideration of the questions presented, and, therefore, we supplement said statement, as follows:

The petitioners' brief fails to state that the General Improvement Bonds, referred to, were duly validated by decree of the Circuit Court of Dade County, Florida, as provided by law; and at p. 5 incorrectly states:

> "By a general recital the injunction was restricted to taxes levied for debt service,"

whereas, said final decree specifically provided:

> "that the foregoing injunction shall not be construed as restraining the said defendants (petitioners here) and others from enjoining, or otherwise restraining, or preventing the levy, assessment and collection of taxes for any purpose *other than the payment of the bonds and coupons of said Town,* and shall not be construed as restraining E. B. Leatherman, as Clerk of the Circuit Court of Dade County, Florida, or his successors in office, from refusing to enforce the tax certificates for any sums due to the said Town, except such sums as may be levied for the payment of the principal and interest of *said bonds,* and shall not be construed as enjoining said defendants, Town of North Miami, and its officers and agents (the respondents herein) from refusing to levy, assess and collect taxes for any purpose other than the payment of the judgment of the complainant and the bonds and coupons issued by said Town" (R. pp. 394-395).

The essential facts of this case, as shown by the record, are clearly and succinctly stated in the opinion of the Circuit Court of Appeals (R. pp. 427-435) reported at pp. 978-980 of 87 Fed. (2d). For the sake of brevity, they will not be repeated here in detail. However, it may be mentioned at this point that at the time the Town of North Miami was incorporated, southern Florida was experiencing one of the greatest real estate "booms" in history. Villages, towns and cities were expanding phenomenally. Outlying areas were rapidly being subdivided and platted for building purposes, and were being miraculously improved with streets, sidewalks, water mains and other utilities.

At the time of the incorporation of the Town, more than two thousand people lived in the area included within the corporate limits (R. 197), but only forty-nine of them (R. 93) were registered voters, so great had been the sudden influx.

The area originally included within the corporate limits of the Town of Miami Shores (now North Miami) was indented by the upper reaches of Biscayne Bay (R. 83). The northeast corner of this area is separated from the peninsula (petitioners' lands) by a narrow body of water known as the East Coast Canal, with Biscayne Bay extending southward in triangular shape. The causeway referred to in the opinion, and elsewhere, throughout the record, would have extended from the mainland eastward to the peninsula at a point just north of the inlet marked "Baker's Haulover Cut" on the map marked "Ocean Beach Heights Exhibit A" (R. 83), and it will be observed

from the engineer's scale that its length would have been approximately one mile.

On February 5, 1926, the registered voters of a community in Dade County, Florida, north of the City of Miami, met, held an election and organized a municipal corporation named "Town of Miami Shores," under and pursuant to Sections 2825-2828 of the Florida Revised General Statutes of 1920, the General Municipal Corporation Act of the State, printed in full in appendix to this brief (R. p. 92).

The validity of the statute has never been questioned and same is now embraced in Sections 2935-2938, inclusive, of the C. G. L. of Fla. 1927. Organization of the Town was in compliance with the terms of the Act (R. pp. 92-102). No objection was made by voters or any property owner to the organization (Master's Rep., p. 370).

The boundaries stated in the publication of notice to assemble and organize, and fixed at the organization meeting, included land on both sides of Bay Biscayne (R. p. 92). After incorporation, the Council authorized several issues of bonds (R. pp. 4 and 5). Before selling said bonds, they were duly validated by legal proceedings in accordance with the statutes of the State of Florida, in such cases made and provided. The bonds contained usual recitals of authority and usual pledge that taxes would be levied annually upon all taxable property within the Town (Ex 4, p. 295 R.).

A certificate of validation was duly endorsed on the bonds and the proceeds were used to construct public improvements (Master's Rep., p. 370).

Among the public improvements undertaken was a causeway or bridge, which would connect the two parts of the Town (R. p. 147). The officials of the Town exercised municipal power over the entire area, both east and west of the Bay, until 1932 (Master's Rep., pp. 368-369). Even the petitioner recognized the authority of the Town by applying for leave to change the location of a street (R. pp. 237-239). Building permits were issued (R. pp. 161 and 190), fire and police protection furnished (R. p. 95) and garbage collections made (R. pp. 181-182). Taxes were levied and paid without protest (R. pp. 185-186) until 1931.

When the Town was incorporated in February, 1926, neither petitioners nor anyone owning lands east of Biscayne Bay raised any objections to their lands being included within the corporate limits of the Town; nor to the issuance, validation, or sale of general municipal bond issues to raise money for the construction of causeways and other municipal improvements. But, as history records, the Florida "boom" came to an abrupt end, and petitioners and others owning property east of the Bay, in 1929, instituted a *quo warranto* proceeding in the Circuit Court of Dade County to exclude all of the land located east of the Bay (R. p. 84, *et seq.*).

At an extraordinary session of the Legislature of Florida, in 1931, the name of the municipality was by Special Act changed from "Town of Miami Shores" to "Town of North Miami." The Florida Legislature also enacted certain special laws for this municipality in 1927, in 1929 and in 1931, as was known to all persons, and the status of the municipality was thus recognized and

confirmed by the Legislative Department of the State of Florida (see Chap. 13, p. 103 of the Spec. Acts of 1929; Chap. 14, p. 237 of the Spec. Acts of 1929; Chap. 15, p. 347, Chap. 15, p. 822, Chap. 15, p. 823 of the Spec. Acts of 1931). The municipality was also recognized by the Judicial Department of the State of Florida in the validation of bond issues as hereinbefore mentioned.

At the time of the organization of the municipality there existed in Florida, as a part of the general law, a statute enacted by the Legislature to the effect that the jurisdiction of all cities and towns organized under the general law should extend to and over the water of all rivers, creeks, harbors and bays contained within the corporate limits. The statute in question was Section 1833 of R. G. S. of Fla., 1920, and is still in force as Section 2943 of the C. G. L. of Florida, 1927, which we quote, as follows:

> "The jurisdiction of said cities and towns and the authority of the officials thereof, shall be held to have full force and effect over the waters of all rivers, creeks, harbors or bays, contained within the corporate limits."

Accordingly, the incorporators included within the territorial limits, as a part of the corporate area, a part of several bodies of water; namely, the upper reaches of Bay Biscayne, a canal flowing into the Bay, Arch Creek, and other canals. All of the land contained within the corporate limits was not connected, but the disconnected areas were not separated from each other by excluded land. Stated differently, the entire area contained within the corporate limits was contiguous ter-

ritory when the term "territory" is used in such sense as to include the Bay bottom and the beds of the streams mentioned.

Long after the bond issues had been validated and sold, and after the municipality had been recognized by the Florida Legislature, and notwithstanding the provisions of Section 1833 of the R. G. S. of Florida, 1920, relative to the jurisdiction of cities and towns over waters within their limits, Attorney General of Florida on August 12, 1929, filed in the Circuit Court of Dade County, an information for a writ of *quo warranto* setting forth that the Town of North Miami, and its officers, unlawfully exercised jurisdiction over the territory included within the original corporate limits lying east of Bay Biscayne, as well as certain islands, the principal ground for the assertion being that the lands last mentioned were not contiguous to the mainland or the principal portion of the area comprising the municipality. That is to say, that the lands lying in Bay Biscayne and the lands lying east thereof, were not connected and did not touch, and hence, were non-connecting and unlawfully included in the corporate area (R. 84).

Afterwards, on December 18, 1931, a judgment was entered in the *quo warranto* proceeding above mentioned by judge of the Circuit Court of Dade County, ousting the municipality and prohibiting its officers from exercising the offices, franchises and privileges of a municipality over such territory. The judgment contained a recital to the effect that all that portion of the "purported" Town of Miami Shores (North Miami), lying

east of Bay Biscayne, never was legally incorporated in the Town and never was a part thereof, and the attempted inclusion thereof was illegal, null and void (R. 355).

Prior to the entry of the last mentioned judgment purporting to divide the municipality, or detach a part of the lands of the interveners (petitioners), the Circuit Court entered (1) a judgment of ouster in the same proceeding dated March 27, 1930, but that judgment of ouster was reversed by the Florida Supreme Court on writ of error (*Mahood, et al.* v. *State, ex rel. Davis,* 101 Fla. 1254, 133 So. 90).

The reversal of the first judgment restored the Town of North Miami to the position it was in before judgment, and the municipality continued as, at least a *de facto* corporation, in the exercise of jurisdiction over all of the original area.

A second judgment of ouster was entered in the lower court (R. p. 353) from which no appeal was taken. The only parties to that action were the taxpayers and the two officials (see Ex. R. pp. 302-360).

In the meantime, the Brown-Crummer Investment Company, as holder of past due bonds and coupons, obtained a judgment in the United States District Court and also, an alternative writ of mandamus (R. pp. 204-210), requiring the Town to levy a tax on all taxable, assessable property located within the original boundaries of the Town (R. p. 208). Petitioners and other tax-

payers attempted to intervene. Testimony was taken and a peremptory writ issuing (R. p. 204, *et seq.*), an appeal to the Circuit Court of Appeals was attempted, but was dismissed on the grounds that the appellants (petitioners here) were not proper parties to the mandamus, 69 Fed. (2d) 105.

However, subsequent to the entry on December 18, 1931, (Tr. p. 353) of the second judgment of ouster, by the lower court, from which no appeal was taken, it relinquished its claim to the land east of the median line of Bay Biscayne, pursuant to the mandate of the Dade County Circuit Court.

As the peremptory writ required the Town to levy taxes on the lands east of the Bay, as well as on lands west of the Bay, for the payment of the judgment, Brown-Crummer Investment Company filed its Bill of Complaint: (1) to protect the town officials from the effect of the judgment of ouster, and thus, make effective the peremptory writ of the Federal Court; (2) to enjoin the petitioners, and other taxpayers, who had instituted proceedings in the State Court, from interfering with the future levy and collection of taxes for the payment of the judgment, and any bonds which the town had issued (R. 1).

III.

ARGUMENT.

(Note: Italics ours unless otherwise indicated.)

POINT A.

Where decisions of State Courts affect and impair the enforcement of municipal bonds held by non-resident bond owners (valid contracts between citizens of different states), which were issued and validated before such State Court decisions were rendered, can the courts of the United States, by injunction, control the operation, application and effect of such State Court decisions, in order to prevent such impairment (pursuant to Section 10, Article 1 of the Constitution), and grant protection to the officers of the municipality from threatened punishment for contempt of said State Court decisions?

Manifestly, the foregoing question was properly answered in the affirmative, by both the United States District Court and the United States Circuit Court of Appeals for the Fifth Circuit.

In the recent case of the *City of Winter Haven, Fla.* v. *Gillespie, et al.*, 84 Fed. (2d) 285 (decided June 10, 1936), reviewing on appeal a final decree in favor of the bond holders, entered in the District Court of the United States for the Southern District of Florida, in which the allegations of the bill of complaint were, in most particulars, identical with those in the case at bar, Judge Hutcheson, speaking for the court, said:

> "Testing its appeal by that rule, we think it plain that the decree should be affirmed, for it clearly appears from the bill that as to the bonds and the

territory in question, everything the state required to be done was done to validate the bonds before they went into the hands of innocent purchasers. There was even a judgment in a plenary validating proceeding establishing their validity. *Greene* v. *Uniacke* (C. C. A.), 46 F. (2d) 916; *Sparks* v. *Ewing*, 120 Fla. 520, 163 So. 112; *City of Winter Park* v. *Dunblaine, Inc.*, 121 Fla. 600, 164 So. 366; *State, ex rel. Fidelity Life Ass'n* v. *City of Cedar Key* (Fla.), 165 So. 672.

"Under these circumstances it may not be doubted that under both state and federal decisions the annexed territory remains liable for the bonds, and must pay them; for the defect for which the judgment of ouster was entered went, not at all to the power of the Legislature under Constitution, but to a defect in the form the exertion of the power took. The ouster proceeding was, therefore, without effect as to these bonds. *For their servicing the City of Winter Haven remains constituted as it was constituted when the bonds were authorized and issued, the officials remain obligated as they were then obligated to act in their servicing.* This is the rule of the federal courts. It is the rule of the state courts. It is especially the rule in Florida. *State, ex rel. Fidelity Life Ass'n* v. *City of Cedar Key, supra; Mobile* v. *Watson*, 116 U. S. 289, 305, 6 S. Ct. 398, 29 L. Ed. 620; *Shapleigh* v. *San Angelo*, 167 U. S. 646, 17 S. Ct. 957, 42 L. Ed. 310; *Payne* v. *First Nat'l Bank* (Tex. Com. App.), 291 S. W. 209; *c/f Board of Public Instruction for Polk County* v. *Gillespie* (C. C. A.), 81 F. (2d) 586; *City of Decatur* v. *Thames B. & T. Co.* (C. C. A.), 84 F. (2d) 105."

Another case involving similar facts is that of *Clapp* v. *Otoe County*, 105 Fed. 473, decided by the United States Circuit Court of Appeals for the Eighth Circuit, in 1900, the opinion being by Judge Sanborn. There, a conflict

existed between the judgments of the state and federal courts relative to a mistake of boundaries, and liability for taxation, of a *de facto* organization. It was there said:

> "When these bonds were issued and sold, *every citizen of the territory* comprised within the order of October 4, 1886, and called 'Nebraska City Precinct' and *every piece of property therein,* was represented by the Board of County Commissioners of Otoe County, in all the proceedings which culminated in the issue of these bonds. *That board was the agent of these citizens and this property, under the statutes, to borrow the money which they voted to obtain upon the bonds.* Under the color of law, it constituted the precinct, called the election, issued the bonds, and no man objected. Under these circumstances, Nebraska City Precinct was a precinct *de facto* and the board of county commissioners were its governing officers *de facto,* and the silence and general acquiescence of the private citizens within it and the officers of the state and county, until after the rights of the bondholders had vested, estop them from questioning the acts of these officers, as against the purchasers of the bonds. The acts of these officers have all the force of the acts of officers *de jure* for a precinct legally constituted, *and the owners of the property within the boundaries of the order of the board of county commissioners of October 4, 1886, are estopped, by their silence and acquiescence, from denying that the property within those limits is liable to taxation to raise the necessary amount to pay these bonds.*"

In an earlier part of the opinion in that case, it was stated:

> "A state court may not by injunction prevent a federal court from proceeding to judgment in an action of which it has jurisdiction, or from en-

forcing its judgment by a mandamus to compel the levy and collection of taxes to pay it. *Holt Co.* v. *National Life Ins. Co.*, 80 Fed. 686, 691, 25 C. C. A. 469, 474, 49 U. S. App. 376, 385; *Riggs* v. *Johnson Co.*, 6 Wall. 166, 18 L. Ed. 768; *Supervisors* v. *Durant*, 9 Wall. 415, 19 L. Ed. 732; *Hawley* v. *Fairbanks*, 108 U. S. 543, 2 Sup. Ct. 846, 27 L. Ed. 820."

Therefore, it is obvious that the Circuit Court of Appeals properly held that the District Court ruled correctly in denying the petitioners' motion to dismiss, and in retaining jurisdiction over the case for the purpose of granting, upon proof of the allegations of the bill, the relief ultimately provided for in the final decree (Tr. 389).

POINT B.

The Circuit Court of Appeals of the United States properly affirmed the judgment of the District Court in holding that the *quo warranto* proceeding in the State Court ousted the jurisdiction of the municipality as to lands east of Biscayne Bay prospectively only —without deciding whether said territory could be taxed to discharge its proportionate part of the municipality's bonded indebtedness incurred prior to the judgment of ouster.

The Supreme Court of Florida has stated that *quo warranto* is a remedy the office and scope of which depends on the use and limitations authorized by the common law of England as of the date of the adoption of the common law in Florida, there having been no subsequent modification either of a statutory or judicial character. We refer to the case of *State ex rel. Landis*,

Attorney General v. *Pravatt* (110 Fla. 29), 148 So. 578, 580, from which we quote the following:

> "'*Quo Warranto*' is defined by Blackstone (3 Com. 262) to be 'in the nature of a writ of right for the King against one who claims or usurps any office, franchise or liberty, to inquire by what authority he supports his claim, in order to determine the right,' *and this definition clearly imports the limitations and extent of the remedy.*
>
> "In the instant case the information was filed against the defendants as individuals, for exercising the office, franchise, or privilege of Board of Trustees of Volusia County Fair, and not against the corporation as such. In cases where the action is brought against individuals, usurping or intruding into any office or franchise, or of unlawfully holding the same, a judgment of ouster should be rendered; but where the proceeding is against a corporation, and a conviction follows for non-user, misuser, or long neglect of a liberty, franchise, or privilege, it appears that a judgment of ouster and dissolution should be rendered, which is equivalent to a judgment of seizure at common law. 22 R. C. L. 724 In *King* v. *City of London*, 2 T. R. 522, the rule is stated to be this: *When it clearly appears to a court that a liberty is usurped by wrong and upon no title, judgment of ouster only shall be entered. But when it appears that a liberty has been granted, but has been misused, judgment of seizure into the King's hands shall be given.* 51 C. J. 361, states the rule to be: '*Under its common-law powers, the court in granting relief against one exercising an office, will go no further than to oust the wrongful possessor of the office.*' • • •
>
> "• • • The *only* question to be determined by this action is whether the defendants are usurping a liberty, franchise, or privilege, without authority of law. This limitation of the scope and ex-

tent of the relief afforded in the proceedings in the nature of *quo warranto* was sustained in *Albright* v. *Territory,* 13 N. Mex. 64, 79 P. 719, 11 Ann. Cas. 1165, and *State ex inf. Pope ex rel. Oberholser* v. *Mansfield Special Road District,* 299 Mo. 663, 253 S. W. 714."

In Corpus Juris, Volume 51, page 361, paragraph 84, it is said:

"In a proceeding against a corporation the court may enter a judgment of ouster as to the corporate franchise *or merely as to particular powers;* and if the corporation is dissolved the court may order incidentally that the officers shall no longer exercise the functions of their offices; *but the forfeiture of the franchises of the corporation and the ouster of its officers from the exercise of official power constitute the limits of the relief which may be granted.*"

Even in the absence of the foregoing rule, the conclusions of the state court would *not be binding* on the *bond holders,* in the present suit, *as they were not parties* to the *quo warranto* proceedings, and neither were they parties to the injunction suit now referred to as the case of *Leatherman, Clerk* v. *Alta Cliff Company, both of which cases were disposed of by the state courts on questions of fact.*

In the case of *Mahood, et al.* v. *State ex rel. Davis, Attorney General,* 101 Fla. 1254, 133 So. 90, decided March 21, 1931, it was said:

"We could affirm the judgment of ouster were it not for the fact that the answer alleges, '*It is denied that said territory is not a part of the community of Miami Shores, and that is far removed and isolated from* the community.' This allegation tra-

verses the allegation of the information to the effect that the territory sought to be affected by the information was not a part of the community of Miami Shores. *This presents a question of fact which the respondents are entitled to have tried by a jury, and, until the truth in regard to that fact has been ascertained, it is not needful to discuss other questions raised by the pleadings.*"

In *Leatherman, Circuit Court Clerk* v. *Alta Cliff Company,* 114 Fla. 305, 153 So. 845, decided March 21, 1934, the Florida Supreme Court observed that:

"Our mandate reversing the cause was issued pursuant to the opinion and judgment being filed on March 24, 1931. After the going down of the mandate, the Circuit Court entered an order wherein and whereby the city officers and the Town of North Miami, formerly known as the Town of Miami Shores, were each and all ousted, excluded, and prohibited from exercising municipal functions over the territory in which the lands here involved are embraced.

"The ouster of jurisdiction was necessarily based upon the finding and adjudication that there had never been any authority in law for the inclusion of the territory east of Biscayne Bay within the corporate limits of the Town of Miami Shores, and, if there had never been any lawful authority for the inclusion of that territory within the municipality, then the municipality never acquired any *de facto* or *de jure* jurisdiction over the lands embraced in that territory."

The state courts could try *only* the cases submitted to them by the litigants. The *only* question presented for determination in the *quo warranto* proceedings was whether the municipality was a *de jure corporation.*

Whether their conclusions were based on the same showing of facts as in the case at bar is purely a matter of speculation, but even if identical, the *fact findings* of the state courts were not binding on the District Court of the United States, or any other Federal Court.

In any event, if the state courts had before them the same facts as shown by the evidence in the case at bar, the judgments rendered were out of harmony with the view expressed in the case of *West* v. *Town of Lake Placid*, 97 Fla. 127, 120 So. 361, wherein Mr. Justice Strum, speaking for the Supreme Court of Florida, said:

> "Where an attempted incorporation of a municipality is an absolute nullity, such incorporation may be collaterally attacked. In this instance, however, acting under at least color of authority from the Legislature found in the passage of Chapter 12990, *supra, this municipality apparently in good faith has taken the necessary steps to put its charter into operation, has elected its officers, has assumed the duties of local government under its charter, and has otherwise engaged in an active user of the franchise—all of which has been acquiesced in by the inhabitants of the municipality until the institution of this proceeding. Thus the municipality has become at least a municipality de facto. Tulare Irr. Dist.* v. *Shepard*, 185 U. S. 1, 22 S. Ct. 531, 46 L. Ed. 773; *Town of Constitution* v. *Chestnut Hill Cemetery Association*, 136 Ga. 778, 71 S. E. 1037; *Cooper* v. *Town of Valley Head*, 212 Ala. 125, 101 So. 874; 43 C. J. 98."

In fact, the situation here presented is similar to that which obtained in the case of *City of Sour Lake* v. *Branch*, 6 Fed. (2d) 355, where the Circuit Court of Appeals, speaking through Judge Foster, said:

"Regardless of the holding of the Court of Civil Appeals as to the City of Sour Lake, it is settled that the incorporation of a town under the laws of Texas is not wholly void *ab inito* because territory unsuitable for town purposes is improperly included within its limits, but is merely voidable. *Shapleigh* v. *City of San Angelo*, 167 U. S. 646, 17 S. Ct. 957, 42 L. Ed. 310. *It is elemental that, with regard to its obligations, a corporation de facto is to all intents and purposes the same as a corporation de jure.* The rule is thus stated by Cook: 'A corporation cannot defeat its bonds and debts by alleging its want of lawful incorporation.' Cook on Corporations (8th Ed.), Par. 637."

This case is also similar, as to the point now under consideration, to the case of *South Houston* v. *Carman*, 6 Fed. (2d) 358, in which it was said:

"There is nothing to distinguish this case in principle from the cases of *City of Sour Lake, et al.* v. *Vernon H. Branch* (No. 4504 on the docket of this court), 6 F. (2d) 355, decided this day and the case of *Shapleigh* v. *San Angelo*, 167 U. S. 646, 17 S. Ct. 597, 42 L. Ed. 310. The irregularity in the attempted incorporation does not seem to have been any greater than that shown in those cases. The administration of the Village of South Houston was illegal, but nevertheless, the commissioners appointed by the mayor were *de facto* officers, occupying *de jure* offices. In *Norton* v. *Shelby County*, 118 U. S., at page 446, 6 S. Ct. 1127, 30 L. Ed. 178, in defining *de facto* officers the court said:

"'An officer *de facto* is one whose acts, though not those of a lawful officer, the law, upon principles of policy and justice, will hold valid, so far as they involve the interests of the public and third persons, where the duties of the office are exercised.'"

The points of law, as presented by the petitioners' brief, under the "Argument," apparently seek to divert attention from the real issue. For example, Point "A," as stated in petitioners' brief at page 6, is purely hypothetical, irrelevant, misleading, and has no application to the facts of the case at bar, for the reason that the Supreme Court of Florida has never rendered a decision upon the rights possessed by the holders of bonds of the Town of North Miami (formerly Town of Miami Shores) to have taxes levied against property east of the Bay. Both the decisions of the Supreme Court of Florida—*Mahood, et al.* v. *State ex rel. Davis,* 101 Fla. 1254, 133 So. 90, and *Leatherman* v. *Alta Cliff Company, et al.,* 114 Fla. 305, 153 So. 845—relied upon by the petitioners, had as parties, taxpayers *only* on one side, and the town and its officials *only* on the other. These cases, therefore, could not be *res judicata* of the issues involved in the case at bar.

As the Alta Cliff case purports to follow, and to be founded upon, the earlier Mahood case, we will discuss the Mahood case first. There, the Supreme Court of Florida considered the question as to whether the petitioners' lands were properly included as a part of the municipality, in reviewing a judgment of ouster in a *quo warranto* proceeding; it was held that the Town was a legally constituted municipality under the laws of the state, but that Biscayne Bay, which indented the territory and in a large measure separated the western and eastern parts of the Town, was such a disconnection that if the inhabited and built-up portions of the Town were located

on the west side of the Bay, it could not include the lands on the east side of the Bay.

As we feel unable to improve upon the analysis of the *Mahood case* made by the District Judge, in the light of the facts of the case at bar, we will quote from his opinion in the mandamus case, being *United States ex rel. Brown-Crummer Investment Company v. Town of North Miami,* 11 Fed. Supp. 69. It is there said with respect to the Mahood case that:

> "The Court evidently had in mind that the waters of Biscayne Bay was such a division that it could not be considered as being included in the town area and considered only the land as not being contiguous; that is, touching. The land bordered water and the whole area including the bay was within the area of the town. The Court says further: 'We are not prepared to say that the Legislature could not by proper enactment create a municipality embracing an area a part on one side and a part on the other side of a bay of this character, but in this case the Legislature has not attempted to do that.' *The town however did, under general legislative authority, do that very thing.* As hereinafter stated, the necessity for contiguous territory being within the corporate limits has been settled by the Florida Supreme Court in several cases. *Town of Enterprise* v. *State*, 29 Fla. 128, 10 So. 740; *Mahood* v. *State, supra; Town of Boynton* v. *State*, 103 Fla. 1113, 138 So. 639. With these decisions, I do not differ. A town cannot hop, skip and jump over territory taking this piece of land and that piece of land without reference to a united whole. The question before me is whether lands in a duly and legally incorporated town under the provision of sections 2935, 2937, 2942 and 2943, and other applicable sections of the Compiled General Laws of

Florida 1927, under which Miami Shores, now North Miami, was incorporated, and which town did duly and legally issue municipal bonds, can be eliminated thereafter by judicial decree from the levy of a tax to pay a judgment secured upon said bonds on the ground that said lands never had been a part of the territory of said town because in the opinion of the Court in construing the principle back of the statute said lands were not contiguous by reason of being separated by a body of water known as Biscayne Bay. *The contiguous tracts as dealt with by the Florida decisions were with reference to surveyed and plotted or legally described tracts of land absolutely separated by operation of law.* Biscayne Bay is a body of water. *It is not such a tract of land as the said court had under consideration in said cases.* Section 2937 of said statutes expressly says that when the municipal corporation is to be formed thirty days' notice by publicity must be given, 'requiring all persons who are registered voters, residing in the proposed corporate limits, *which shall be stated in this notice,* to assemble at a certain time and place to select officers and organize a municipal government.'

"It is admitted that this procedure was had as thus required. The east side of Biscayne Bay was included in the described territory. That is, the west side of Biscayne Bay and the east side were all taken into the town area as I understand and the admission of the pleadings. Section 2943 says: *'The jurisdiction of said cities and towns, and the authority of the officers thereof, shall be held to have full force and effect over the waters of all rivers, creeks, harbors or bays contained within the corporate limits.'*

"In *Lane* v. *State,* 63 Fla. 220, 57 So. 662, 663, the court says: 'There is no constitutional provision regulating the statutory descriptions of municipal territory • • • under this broad au-

thority it is within the power of the Legislature by valid enactments to prescribe the territorial limits of a municipality as it deems proper when no provision or principle of organic law is violated.'

"'Under section 2937 aforesaid, the Legislature delegated this power to the municipality authorizing it in its organization notice to describe the corporate limits. When a town does this it is a legislative act. *No decision of the Florida Courts has been cited, nor can I find any, dealing with an issue of municipal bonds under the conditions presented in this case.* While the lands involved in this case were thus included in the organization notice of Miami Shores and before the decisions of the state court in *Mahood* v. *State* or the decree of the Circuit Court of Dade County, the bonds in question were duly issued after public notice and election. No protests were made by any of the property owners on the east side of the bay, either at the time of the organization of the town or at the time of the election and confirmation of the bond issue. Three years elapsed after the first issue and more than a year after the last issue and sale of said bonds before any objections were heard, and these came at a time when the owners of the bonds brought suit against the town for judgment on account of default in the payment of principal and interest and when judgment was entered. As set forth in the petition in this case, there is no allegation that there was any fraud in the proceedings or that the purchasers of the bonds were not *bona fide*. The purchasers of the bonds had a right to rely upon the existing statutes as aforesaid and upon the record of the said lands in question being within the town area and being part of the security back of the bonds. The property owners of the land in question had an opportunity to prevent by prompt action just what they are now seeking. The statute was in force giving power in the town to include the waters of the bay and the lands along the same. We

judicially know that towns are constructed with large lakes and rivers and bays within their area and municipal facilities are constructed for the public utilization of and over said waters. Of two innocent parties, bondholders and east side land holders, which shall suffer the loss; which one had the opportunity to prevent the present situation and to protect their rights and neglected to do so causing the court to act? We can only answer that it was the owners of the lands in question. Furthermore, the bond issue was validated by decree of the state court after due notice and hearing. Further by legislative act approved June 8, 1929 (Sp. Acts, Fla. 1929, C. 14237), the bond issue was confirmed, by inference at least. The municipality has received the money for the sale of these bonds and spent it for municipal purposes. The Florida Supreme Court, in *State ex rel. Nuveen* v. *Greer*, 88 Fla. 249, 102 So. 739, 742, 37 A. L. R. 1298, in considering invalid municipal bonds, says: 'The bonds were expressly authorized by statute and were issued as required by the statute. The proceeds were received by the municipality and used for its benefit. The implied limitation that was held by the court to make the issue of the bonds contrary to organic law, was developed by judicial interpretation *after* the bonds had been sold, and the money had been used by the city for its purposes as expressly and specifically authorized by the statute. These circumstances clearly render the municipality liable for the amount of money so received by it, with interest.' Undoubtedly mandamus would lie to compel a city to pay a judgment under this doctrine.

"The limitation on Miami Shores as to the land east of Biscayne Bay being beyond its power to include has been *developed by judicial interpretation after the bonds had been issued and the money therefor used.* The argument of the Court in the above case applies with equal force to the facts in this

case. 'The obligation to do justice rests upon all persons, natural and artificial, and if a county obtains the money or property of others without authority, the law, independent of any statute, will compel restitution or compensation.' *March* v. *Fulton Co.*, 10 Wall. (77 U. S.) 676, 684, 19 L. Ed. 1040; *Louisiana* v. *Wood*, 102 U. S. 294, 299, 26 L. Ed. 153. I am aware that the Circuit Court of Dade County, Fla., pursuant to a mandate of the Florida Supreme Court in *Mahood* v. *State*, 101 Fla. 1254, 133 So. 90, has decreed that the lands in question never were within the area of the town of Miami Shores or North Miami. I cannot agree with this in so far as to deny liability in this mandamus suit. At the time of the bond issue they were included as I have set forth. On the strength of this inclusion the bonds were sold to *bona fide* purchasers.

"Counsel for respondents urge the decree of the state court as being *res adjudicata* of the question presented and that the court must follow the same. I do not think so. *We are dealing here with a question of general jurisprudence, of commercial law—dealing with municipal securities and the rights of bondholders.* General law must decide the issue. The law of estoppel operates in justice against the respondents. The federal court is not bound by the state decision. Under the circumstances *none of the State cases presented deal with the rights of bondholders under the conditions presented.*

" 'It is an axiom in American jurisprudence that a statute is not to be pronounced void upon the ground that it is in conflict with the Constitution of a state, unless the repugnancy to the Constitution be clear and the conclusion that it exists inevitable.' Every doubt is to be reserved in support of the enactment, * * *. The judicial function involving such a result is one of delicacy and to be exercised always with caution * * *.

"'With all respect for the eminent tribunal by which the judgments were pronounced we must be permitted to say that they are not satisfactory to our minds * * *. The question before us belongs to the domain of general jurisprudence. In this class of cases the court is not bound by the judgment of the court by the state where the case arises. It must hear and determine for itself. Here commercial securities are involved. When the bonds were issued there had been no authoritative intimation from any quarters that such statute was invalid, * * * the acquiescence was universal * * *.

"'The National Constitution forbids the states to pass laws impairing the obligation of contracts. In cases properly brought before us that end can be accomplished, unwarrantably no more by judicial decisions than by legislation. Were we to yield in cases like this to the authority of the decisions of the courts of the respective states, we should abdicate the performance of one of the most important duties with which this tribunal is charged and disappoint the wise and salutary policy of the framers of the Constitution in providing for the creation of an independent Federal judiciary.' *Township of Pine Grove* v. *Talcott*, 19 Wall. (86 U. S.) 666, 22 L. Ed. 227; *Board of Com'rs of Stanly County* v. *W. N. Coler & Co.*, 190 U. S. 437, 23 S. Ct. 811, 47 L. Ed. 1126; *Folsom* v. *Township*, 159 U. S. 611, 16 S. Ct. 174, 40 L. Ed. 278; *Burgess* v. *Seligman*, 107 U. S. 20, 2 S. Ct. 10, 27 L. Ed. 359; *Herron* v. *S. P. Co.*, 283 U. S. 91, 51 S. Ct. 383, 75 L. Ed. 857.

"The doctrine of the Federal Courts in cases of this character is expressed in *Bourbon County* v. *Block*, 99 U. S. 686, 699, 25 L. Ed. 491: 'We have not overlooked the opinion delivered by the *Supreme Court of the State* in *Lewis* v. *Commissioners, supra* (12 Kan. 186). The judgment in the case was not

given until after the bonds were issued, and after the rights of the holders thereof had become fixed. We are, therefore, at liberty to follow our own convictions of the law. To those expressed by the state court we cannot assent. They are not in harmony with many rulings of this court made and respected through a long series of years, and they are not such as in our opinion would administer substantial justice if applied to this case.' *Board of Com'rs of Comanche County* v. *Lewis*, 133 U. S. 198, 10 S. Ct. 286, 33 L. Ed. 604."

The Supreme Court of Florida did not hold, in the Mahood case (as petitioners apparently contend) that a *de facto* municipal corporation could not exist with corporate limits extending to and including territory on each side of Biscayne Bay. Further, it did not hold that a *de jure* corporation could not exist including territory on both sides of the Bay. This is very clearly pointed out in the principal opinion of the Circuit Court of Appeals, which the petitioners are asking this Court to review. It is there said:

"The Supreme Court of Florida has not held in the cases cited that if, as a matter of fact, the territory on both sides of the Bay was a part of the hamlet before it was incorporated, it could not be incorporated as a town. Indeed, in the Mahood case it decided the contrary to this. *It definitely held that whether the affected territory was or was not a part of the town, was to be determined as an issue of fact and not of law.*"

In the Mahood case, the trial court first determined that the town was a *de facto* municipality throughout the entire territory (R. 334), and a general judgment of

ouster was entered. The Supreme Court of Florida reversed that judgment, however, holding, in effect, that the town was a *de jure* corporation as to the mainland, or parts thereof, and a *de facto* corporation as to the peninsula or beach area (petitioners' lands), if the inhabited and built-up portions of the town did not extend beyond the mainland. Subsequently, the trial court determined that the lands on the peninsula were not within the inhabited and built-up portions of the town, and entered judgment of ouster in accordance with the mandate of the Florida Supreme Court.

However, in the Alta Cliff case, decided several years later, the Florida Supreme Court held that the judgment of ouster entered in the lower court had a *retroactive effect,* and established that the lands lying east of Biscayne Bay had never been a part of the municipality for any purpose. The Alta Cliff case was decided wholly upon the Mahood case, and the general law with respect to *de facto* corporations, previously recognized as obtaining in Florida, in case of *Town of Enterprise* v. *State,* 29 Fla. 128, 10 So. 740, was wholly disregarded.

Petitioners now assert that the Circuit Court of Appeals has decided an important question of *local* law in a manner probably in conflict with applicable local decisions. Their contentions in this regard are, however, manifestly unsound. First, no question of local law is involved in this case as has been clearly demonstrated in the opinions of the District Court and of the Circuit Court of Appeals. Second, if the Circuit Court of Appeals had attempted to follow the Florida case of *Leatherman* v. *Alta Cliff Company,* its decision would have been in *conflict*

with Florida cases, for the Alta Cliff case itself *conflicts* with both *earlier* and *later* decisions of the Florida Supreme Court. We have already pointed out the conflict between the Alta Cliff case and the earlier Town of Enterprise case. We now refer to the later case of *State ex rel. Landis, Attorney General* v. *Pravatt* (110 Fla. 29), 148 So. 578, 580, from which we quote the following:

> "'*Quo Warranto*' is defined by Blackstone (3 Com. 262) to be 'in the nature of a writ of right for the King against one who claims or usurps any office, franchise or liberty, to inquire by what authority he supports his claim, in order to determine the right.' *And this definition clearly imports the limitations and extent of the remedy.*
>
> "In the instant case the information was filed against the defendants as individuals, for exercising the office, franchise, or privilege of Board of Trustees of Volusia County Fair, and not against the corporation as such. In cases where the action is brought against individuals, usurping or intruding into any office or franchise, or of unlawfully holding the same, a judgment of ouster should be rendered; but where the proceeding is against a corporation, and a conviction follows for non-user, misuser, or long neglect of a liberty, franchise, or privilege, it appears that a judgment of ouster and dissolution should be rendered, which is equivalent to a judgment of seizure at common law. 22 R. C. L. 724. In *King* v. *City of London*, 2 T. R. 522, the rule is stated to be this: *When it clearly appears to a court that a liberty is usurped by wrong and upon no title, judgment of ouster only shall be entered. But when it appears that a liberty has been granted, but has been misused, judgment of seizure into the King's hands shall be given.* 51 C. J. 361 states the rule to be: '*Under its common-law powers, the court in granting relief against one exercising an office, will go no further*

than to oust the wrongful possessor of the office.'

"* * * The *only* question to be determined by this action is whether the defendants are usurping a liberty, franchise, or privilege, without authority of law. This limitation of the scope and extent of the relief afforded in the proceedings in the nature of *quo warranto* was sustained in *Albright* v. *Territory*, 13 N. Mex. 64, 79 P. 719, 11 Ann. Cas. 1165, and *State ex inf. Pope ex rel. Oberholser* v. *Mansfield Special Road District*, 299 Mo. 663, 253 S. W. 714."

Further, we mention that in the case of *West* v. *Town of Lake Placid*, 97 Fla. 127, 120 So. 361, the Supreme Court of Florida made a ruling with which the Alta Cliff case *conflicts*. In the West case it was said:

"In this instance, however, acting under at least color of authority from the Legislature found in the passage of Chapter 12990, *supra, this municipality apparently in good faith has taken the necessary steps to put its charter into operation, has elected its officers, has assumed the duties of local government under its charter, and has otherwise engaged in an active user of the franchise—all of which has been acquiesced in by the inhabitants of the municipality until the institution of this proceeding. Thus the municipality has become at least a municipality de facto. Tulare Irr. Dist.* v. *Shepard*, 185 U. S. 1, 22 S. Ct. 531, 46 L. Ed. 773; *Town of Constitution* v. *Chestnut Hill Cemetery Association*, 136 Ga. 778, 71 S. E. 1037; *Cooper* v. *Town of Valley Head*, 212 Ala. 125, 101 So. 874; 43 C. J. 98."

As there existed in Florida no constitutional impediment to the creation of a town extending to both sides of a body of water, and as the town in the present case was organized in good faith under color of law, we submit that

it became a *de facto* municipal corporation as to all of the territory included within its original limits, and that the District Court and the Circuit Court of Appeals committed no error in declining to follow the Alta Cliff case.

The Alta Cliff case *did not involve the rights of bondholders.* The petitioners say, nevertheless, that the Circuit Court of Appeals should have followed it and should have reversed the decree of the District Court. They are wholly unmindful, however, of the fact that the Florida Supreme Court *refused* to follow the Alta Cliff case in a suit *involving rights of bondholders,* and expressly declared that *a prior judgment of ouster was not retroactive* and *could not affect the bondholders' rights.* We refer to the recent case of *State ex rel. Fidelity Life Association* v. *City of Cedar Key* (122 Fla. 455), 165 So. 672, from which we excerpt the following:

> "The judgment in *quo warranto* relied on as a defense in this case *must therefore be construed* as having been rendered by the Circuit Court in the light of section 5109, C. G. L., *supra,* and *as not having any legal effect as an avoidance of the obligations validated or as an obstacle to the ordinary remedies available to a holder thereof for their enforcement against the municipality obligor thereon.*
>
> • • • •
>
> "The present writ of mandamus runs to the officers who would be required to execute the acts commanded to be done by them had the *quo warranto* judgment ousting them as officers of the City of Cedar Key never been obtained. *Such quo warranto judgment, as we have seen, must be construed as having a prospective operation only, in so far as past incurred and duly validated municipal bonds of the*

ousted or dissolved municipal corporation is concerned; no claim being made that the bonds in question are beyond the constitutional power of the state Legislature to authorize on the part of the municipality in any circumstances by mere legislation. The *judgment* in the *quo warranto proceeding is to be presumed, as a matter of law, not to call in question matters expressly or implicitly settled or adjudicated in the bond validation proceeding*, the result of which, under section 5109, C. G. L., section 3299, R. G. S., could not be subsequently called into question indirectly in any Florida court, whether by means of a *quo warranto* suit or otherwise, instituted in the name of the state, or in the name of any other party bound by the decree of validation through actual or virtual representation in that cause."

Petitioners further, in their brief, assert that the Circuit Court of Appeals was bound by the Alta Cliff decision under authority of *Hawks* v. *Hamil*, 288 U. S. 52, 53 S. Ct. 240, 77 L. Ed. 610. They apparently overlooked the fact that the Court there, speaking through Mr. Justice Cardozo, stated:

> *"No controversy is here as to the impairment of the obligation of a contract in violation of the restraints of the Federal Constitution,"*

whereas, the case at bar does involve the impairment of the obligation of contracts, and a violation of the provisions of the Federal Constitution.

Manifestly, if the Circuit Court of Appeals had followed the Supreme Court of Florida in the Alta Cliff case, it would have been led into error.

Nevertheless, the petitioners erroneously contend that the opinions of the Supreme Court of Florida in the

Mahood and Alta Cliff cases prevent the Federal Court from granting the relief prayed.

The bonds were issued upon the assumption of both the Town and the purchasers that they were legal and that the owners of property east of the Bay had approved the inclusion of their lands within the boundaries of the Town. The decisions of the Supreme Court of Florida, above mentioned, were not rendered until long after the rights of the bond holders had accrued. Prior to these decisions there was nothing in any statute of the state, or in any opinion of its court, that could possibly be considered as notice to purchasers of the happening of such a contingency. Both the Supreme Court of Florida and the United States Circuit Court of Appeals for the Fifth Circuit have held to this effect, and that the above decision must be construed as having a *prospective operation only, so far as past incurred and duly validated municipal bonds are concerned.*

POINT C.

Did the Town of North Miami become a *de facto* municipality throughout the entire territory described in its original articles of incorporation, and continue as such to have jurisdiction over the same until the judgment of ouster was entered? If not, does the legislative phrase "within said town" have a different and more far-reaching significance than the phrase "within its territorial jurisdiction," with respect to the levy and collection of a required tax?

In the case of *City of Albuquerque* v. *Water Supply Co.* (1918), 24 N. M. 368, 174 Pac. 217, 5 A. L. R. 519, 536, the Supreme Court of New Mexico, speaking through Mr. Justice Roberts, said:

"In the case of *Riley* v. *Garfield Twp.*, 58 Kan. 299, 49 Pac. 85, the court held that, *until the dissolution* of Garfield County in an action of *quo warranto* brought by the attorney general for that purpose, the acts of all its officers were valid and binding, notwithstanding the unconstitutionality of its organization.

"In Dillon on Municipal Corporations, 5th Ed., para. 67, the author said: '*Where a reputed corporation is acting under forms of law, unchallenged by the state, neither the nature nor the extent of any illegality in the organization can affect the existence of the reputed corporation . . . Even if the illegality in the organization arises from the unconstitutional character of the statute purporting to authorize the organization, it is nevertheless a corporation de facto, if its nature be such as is recognized by the general system of law of the state.*'

"In *Speer* v. *Kearney County*, 32 C. C. A. 101, 60 U. S. App. 38, 88 Fed. 749, the court said: '*We are unable to yield our assent to the broad proposition that there can be no de facto corporation under an unconstitutional law.* Such a law passes the scrutiny and receives the approval of the attorney general, of the lawyers who compose the judiciary committees of the state legislative bodies, of the Legislature, and of the governor, before it reaches the statute book. When it is spread upon that book, it comes to the people of a state with the presumption of validity. Courts declare its invalidity with hesitation, and after long deliberation and much consideration, even when its violation of the organic law is clear, and never when it is doubtful. Until the judiciary has declared it void, men act and contract, and they ought to act and contract, on the presumption that it is valid; and where, before such a declaration is made, their acts and contracts have affected

public interests or private rights, they must be treated as valid and lawful. *The acts of a de facto corporation or officer under an unconstitutional law, before its invalidity is challenged or declared by the judicial department of the government, cannot be avoided, as against the interests of the public, or of third parties who have acted or invested in good faith in reliance upon their validity, by an ex post facto declaration or decision that the law under which they acted was void.'*

"The case of *State ex rel. West* v. *Des Moines*, 96 Iowa 521, 21 L. R. A. 186, 59 Am. St. Rep. 381, 65 N. W. 818, was a direct attack by the state upon the constitutionality of the act providing for the annexation of contiguous territory by the City of Des Moines. The court held that the act was void as being a violation of the constitutional provision in regard to special and local legislation, yet the court held that *the act was color of law for the annexation and for the application of the principles of estoppel.*

"In the case of *Chicago, St. L. & N. O. R. Co.* v. *Kentwood*, 49 La. Ann. 931, 22 So. 192, the court held that the constitutionality of the legislative act providing the method of creating municipal corporations and the organization of the municipal corporation under the act could not be attacked collaterally by the defendant, resisting tax claimed by the corporation. See, also, *Coxe* v. *State*, 144 N. Y. 396, 39 N. E. 400; *State* v. *Gardner*, 54 Ohio St. 24, 31 L. R. A. 660, 42 N. E. 999; *Coe* v. *Gregory*, 53 Mich. 19, 18 N. W. 541; *McCain* v. *Des Moines*, 128 Iowa 331, 103 N. W. 979.

"Judge Cooley says (Cooley, Const. Lim. 363): 'In proceedings where the question whether a corporation exists or not arises collaterally, *the courts will not permit its corporate character to be questioned, if it appears to be acting under color of law,*

and recognized by the state as such. Such a question should be raised by the state itself, by *quo warranto* or other direct proceeding.'

"Color of the law has been defined to be 'the appearance or semblance, without the substance, right; mere semblance of legal right.' 11 C. J. 1225."

In the recent case of *Humphreys, et al.* v. *State ex rel. Palm Beach Company, et al.,* 108 Fla. 92, 145 So. 859, the Supreme Court of Florida held that a special act of the Florida Legislature of 1931, creating a new town out of territory formerly within the corporate limits of the Town of Boynton, and providing that the new municipality should assume fifty per cent of all the indebtedness of the old municipality, could not be given effect, as it impaired the rights of the holders of bonds of the Town of Boynton, issued prior to the severance. A writ of mandamus against the Boynton town officials to compel them to make provision for the payment of outstanding bonds was awarded by the Circuit Court of Palm Beach County. The bonds had been *validated prior* to sale, pursuant to the statute, and it was held that the validation proceeding forever set at rest any defense that might have otherwise been raised on the ground of irregularity or illegality, including questions of both law and fact, so far as those questions could be authorized by the Legislature to be put in repose by judicial proceedings set up for the purpose of having such matters determined, in advance of the issuance and sale of the affected securities. The case is directly in point here, and we quote from the opinion, by the Chief Justice, as follows:

"The effect of state and federal constitutional provisions forbidding enactment of law impairing the obligation of contracts is *to render ineffective any legislation impairing the taxing powers of municipalities to the detriment of creditors, by altering the boundaries or otherwise changing the charters of same, until adequate provision has been made for the protection of creditors* . . . The constitution of the United States is to the effect that all laws which may have been passed since bonds were issued, purporting to take away taxes necessary to meet the payments pledged to be made therefrom when the bonds were sold, are as to affected security holders, invalid as impairing the obligation of contract . . . The payment of contractual obligations, such as bonds, valid and enforceable in a particular way, and from specified resources, against public corporations when they were incurred, cannot be hampered, delayed, or avoided by either constitutional or statutory enactments subsequently adopted."

In the same case it was also said:

"*This court has long since held that all the laws which subsist, at the time and place of the making of a contract, and where it is to be performed, enter into and become a part of the contract made, as if they were expressly referred to and incorporated in its terms, including alike those laws which affect its construction, validity, enforcement or discharge. Com'rs of Columbia County* v. *King,* 13 Fla. 451, 474; *State ex rel. Dos Anigos* v. *Leham,* 100 Fla. 1313, 131 So. 533. *Indeed, such is the holding of the unbroken current of decisions of the Supreme Court of the United States and of other federal courts by which decisions we are bound, when called upon to adjudicate questions of constitutional law arising under Section 10 of Article 1 of the Constitution of the United States. Von Hollman* v. *Quincy,* 4 Wall. 535, 18 L. Ed. 403.

"Section 1 of Article 8 of the Charter of Boynton, Chapter 8918, Special Acts of 1921, under which relator's bonds were issued, contained a provision to the effect that the commission of the town should have the power to raise by tax and assessment upon all real and personal property within said town (as then defined by statute) all sums of money that might be necessary for the payment of interest on the town's bonded indebtedness, and to provide for the payment of its bonds or interest-bearing warrants at maturity, the same to be deposited in such interest paying bank or trust company as should be designated by the commission. The Special Acts of 1923, Chapter 9691, *changed the boundary of the Town of Boynton, but did not alter any other provisions of the old charter.* Therefore, at the time relator's bonds were issued by the old Town of Boynton, that town was vested with authority to levy, and it was thereby made its duty to levy a sufficient tax and assessment upon *all real and personal property within said town.** *In consequence thereof, these provisions of the statutes under which relator's bonds were issued entered into and became a part of the contractual obligation of such bonds, which no subsequent legislative act could constitutionally impair, under whatever guise it might be framed or enacted. State of Louisiana* v. *Police Jury,* 111 U. S. 716, 4 S. Ct. 648, 28 L. Ed. 574; *Hendrickson* v. *Apperson,* 245 U. S. 105, 38 S. Ct. 44, 62 L. Ed. 179; *County Court* v. *United States,* 105 U. S. 733, 26 L. Ed. 1220; *State of Louisiana* v. *New Orleans,* 102 U. S. 203, 26 L. Ed. 132; *Von Hoffman* v. *Quincy, supra; Com'rs of Columbia County* v. *King, supra; Dos Anigos* v. *Lehman, supra.*"

*"The legislative phrase 'within said town' obviously has a different and more far-reaching significance than if the phrase 'within its territorial jurisdiction' had been used. 'Within said town' means within it as it was defined a town by then existing provisions of law. 'Within its jurisdiction,' had such phrase or its equivalent been used, might be deemed to refer to whatever was within its territorial jurisdiction at the time of any particular required tax levy."

Where the Legislature of a state can organize or provide for the organization of municipal corporations, its recognition of a *de facto* municipal corporation by the enactment of special laws for the benefit of such municipal corporation, as in the case at bar, cures organic defects, if any, in connection with the formation thereof. This rule is well established, as was pointed out by the United States Supreme Court in the case of *Comanche County* v. *Lewis,* 133 U. S. 198, 10 Sup. Ct. 286, 33 L. Ed. 604, *supra,* where it is said:

> "It is universally affirmed that when a Legislature has full power to create corporations, its Act recognizing as valid a *de facto* corporation, whether private or municipal, operates to cure all defects in steps leading up to the organization and makes a *de jure* out of what before was only a *de facto* corporation. It is true that there must be a *de facto* organization upon which this recognition may act, as was held in *State* v. *Ford County,* 12 Kan. 446; and in this case it appears from the findings, as well as from the testimony, that there was such *de facto* organization. There being this *de facto* organization, there was ample recognition by the Legislature."

It may be noted that the rule just referred to was invoked and applied by the Supreme Court of Oklahoma in the case of *Board of Commissioners* v. *Clarke and Courts,* 12 Okl. 208, 213, 70 Pac. 210, 211, where a *de facto* county of the State of Texas was transferred to Oklahoma and established as a county there, in such manner that the obligations of the old county in Texas were held to be binding upon the new county in Oklahoma. It was there said:

"In *Comanche Co.* v. *Lewis*, 133 U. S. 198, 10 Sup. Ct. 286, 33 L. Ed. 604, the Supreme Court of the United States has held that when a Legislature has full power to create corporations, its act recognizing as valid a *de facto* corporation, whether private or municipal, operates to cure all defects in steps leading up to the organization, and making a *de jure* out of what before was only a *de facto* corporation. It follows, therefore, that Greer County, Texas, at the time the obligations sued on in this action were issued, was a *de facto* municipal corporation, and that its officers were *de facto* officers, invested with full power and authority to create said indebtedness. Being a *de facto* municipal corporation, its officers had the power to create indebtedness for lawful corporate purposes and it had the power and authority to levy and collect taxes to pay such indebtedness. *The power to levy and collect taxes to pay such indebtedness is not a grant of power to the muncipality as a corporate body, but it is a necessary and indispensable power that is vested in the inhabitants of the incorporated territory.* Hence the valid obligations created by the municipality must survive the dissolution of the corporation and must pass, with whatever public property it may possess, to the inhabitants who continue to reside under the new corporation within the boundaries of the municipal area, and in behalf of the inhabitants of which the debt was originally created. The decisions of the Supreme Court of the United States sustain this general doctrine."

In the case of *People ex rel. Gridley* v. *Farnham*, 35 Ill. 562, it was directly decided that legislative recognition of a town confirms its boundaries. In that case the Supreme Court of Illinois said:

"In the case of *Jameson* v. *People, ex rel.*, 16 Ill. 257, it was held by this Court that where a municipal

corporation has been recognized by enactments of the general assembly, all inquiry into the original organization of the corporation is precluded. It was further held, that in such cases, after long-continued use of corporate powers, and acquiescence of the public in them, the law will indulge in the presumption in support of their legal existence. An Act was adopted by the general assembly, at their session in 1857 (p. 1328), entitled 'An Act to extend the jurisdiction and powers of the president, trustees and constables of the Towns of Oswego and Newark, in Kendall County.' *The provisions of this act refer to and recognize this as an incorporation, and it, by name and in terms, confers additional powers upon the body.* The case of Jameson vs. The People, is decisive of this case, and by it this enactment precludes all inquiry into the regularity of its organization.

"The next question is whether the boundaries of this town were ever fixed and determined. The fifth section of the act authorizing such towns to become incorporated (R. S. 112) declares that, 'for the purpose of carrying the aforesaid provisions into effect, the said president and trustees shall have power to define the boundaries of such town, provided the same shall not exceed one mile square.' On the 20th of February, 1849, the board of trustees, by ordinance, did fix the boundaries of this town. It was again, in 1855, amended by another ordinance. As thus defined, it embraced the property in dispute. *This was the territory over which the president and trustees claimed and exercised jurisdiction, and the act of 1857 operated to confirm this claim as well as other matters of jurisdiction.* We are unable to perceive that there has been any usurpation of corporate franchises by the president and trustees in this case, and there was, therefore, no error in the judgment of the court below, and it is affirmed."

Therefore, while the conclusions reached by the Florida Supreme Court in the *Alta Cliff Company* case, *supra*, may have definitely and satisfactorily disposed of the question as to whether the lands lying east of Biscayne Bay could be taxed by the municipality for administration purposes *generally*, the rights of the bond holders to have the territory in question taxed for the retirement of their bonds was not, and could not have been, settled in that suit. The federal courts are certainly at liberty, under the Constitution of the United States, to determine for themselves that the property of the petitioners, east of the Bay, was such a part of the municipality, when the bonds were validated and issued, as to become subject to taxation for the retirement of those bonds.

POINT D.

The Federal Courts are at liberty to follow their own convictions as to the law, where constitutional questions as to the impairment of contracts are involved, and are not bound by the decisions of State Courts on such questions.

The case of *Clapp* v. *Otoe County*, 104 Fed. 473, *supra*, is so closely in point with the case at bar that we wish to quote at some length from Judge Sanborn's opinion therein, on the question here presented, as follows:

> "Notwithstanding all this, it is earnestly contended by counsel for the defendant in error that inasmuch as the Supreme Court of Nebraska decided, in *Morton* v. *Carlin*, that Nebraska City precinct was never legally constituted, and that, therefore,

all the bonds here in controversy were void, and inasmuch as it reached that conclusion by construing the statutes of that state, its decision is binding upon the federal courts, under the rule so often announced and applied in this court, that 'the national courts uniformly follow the construction of the constitution and statutes of a state given by its highest judicial tribunal, in all cases that involve no question of general or commercial law, and no question of right under the constitution and laws of the nation.' *Madden* v. *Lancaster Co.*, 65 Fed. 188, 192, 12 C. C. A. 566, 570, 27 U. S. App. 528, 536. There are, however, two exceptions to this rule as vital and as clearly established as the rule itself. *The first is that decisions of state courts which affect the validity of contracts between citizens of different states, which were made, or under which rights were acquired, before there was a judicial construction of the constitution or statute which seemed to authorize the contrgcts, are not obligatory upon the courts of the United States.* *Speer* v. *Board*, 88 Fed. 749, 760, 32 C. C. A. 101, 113, 60 U. S. App. 38, 57; *Burgess* v. *Seligman*, 107 U. S. 20, 27, 2 Sup. Ct. 10, 27 L. Ed. 359; *Pleasant Co. Tp.* v. *Aetna Life Ins. Co.*, 138 U. S. 67-72, 11 Sup. Ct. 215, 34 L. Ed. 864; *Louisville Trust Co.* v. *City of Cincinnati*, 47 U. S. App. 36-47, 22 C. C. A. 334, 76 Fed. 296, 301; *Jones* v. *Hotel Co.*, 30 C. C. A. 108, 86 Fed. 370, 373. *The other exception is that conceding that the action of a municipal or quasi municipal body was illegal, as held by a state court, still the question whether or not the illegal action of such a body, in the exercise of a power granted to it, constitutes any defense to bonds issued or contracts made pursuant to such action, and held by a bona fide purchaser, is a question of general jurisprudence, which it would be a dereliction of duty for a federal court to decline to consider and determine for itself.* *Speer* v. *Board*, 88 Fed. 749, 762, 32 C. C. A. 100, 114, 49 U. S. App.

38, 39; *Hartford Fire Ins. Co.* v. *Chicago, M. & St. P. Ry. Co.*, 70 Fed. 201, 203, 17 C. C. A. 62, 65, 36 U. S. App. 152, 156.

"The plaintiff in this case was a citizen of the State of New York. The bonds of this county were issued in 1886, and he purchased and paid for them in good faith in 1887. Without notice of any defect in their execution or in the preliminary proceedings which led to their emission. By this purchase he entered into a contract relation with this county, a citizen of the State of Nebraska, before any construction had been given by any court to any statute of that state, or to any action of the board of county commissioners of that county, which cast a shadow of suspicion upon the bonds he bought. By his purchase he acquired the right, under the Constitution and laws of the United States, to have his contracts interpreted, and his rights enforced, in a court of the United States, and *a fortiori* to the independent judgment of that court upon the legal questions his case presents. No decision of a state court rendered after his rights under these contracts had vested could forestall the judgment of a national court upon these questions, or deprive him of the right to invoke, or relieve a federal court of the duty to accord, its independent consideration and decision of his case. Much less could the decision of a state court, which studiedly ignored the rights of innocent purchasers of these bonds, and which was not rendered until ten years after they were bought, deprive the purchaser of the right to the independent opinion of the federal court to which he presents them. This question is not new in this court. It was considered more at length in *Speer* v. *Board*, 32 C. C. A. 100, 88 Fed. 760, and reference is made to the opinion in that case for a more extended discussion of it, and for a review of some of the authorities which sustain the proposition which we have announced."

Other authorities in point are McQuillin on Municipal Corporations, Vol. 2, page 1637, paragraph 757; *Birmingham Waterworks Co.* v. *Birmingham*, 211 Fed. 497, affirmed 213 Fed. 450; *Denver* v. *Mercantile Trust Co.*, 201 Fed. 790, 798, 120 C. C. A. 100, 161 Fed. 769; and *New York Electric Lines Co.* v. *Empire City Subway Co.*, 235 U. S. 179, 35 Sup. Ct. 72, 59 L. Ed. 184.

As was pointed out by the District Judge, in his opinion in the case at bar (R. p. 63), the impairment of the obligation of contracts cannot legally be accomplished by judicial decision any more than by legislation. Among the authorities cited and relied upon by the lower court in this connection is the case of *Pinegrove Township* v. *Talcott*, 19 Wall. 666, 679, 22 L. Ed. 227, wherein Mr. Justice Swayne, speaking for the United States Supreme Court, said:

> "The general understanding of the legal profession throughout the country is believed to have been that they were valid. The National Constitution forbids the states to pass laws impairing the obligation of contracts. *In cases properly brought before us that end can be accomplished unwarrantably no more by judicial decisions than by legislation.* Were we to yield in cases like this to the authority of the decisions of the courts of the respective states, we should abdicate the performance of one of the most important duties with which this tribunal is charged and disappoint the wise and salutary policy of the framers of the Constitution in providing for the creation of an independent federal judiciary. The exercise of our appellate jurisdiction would be but a solemn mockery. *Butz* v. *Muscatine*, 8 Wall. 579, 19 L. Ed. 492."

In the case of *Murray* v. *Charleston*, 96 U. S. 432, 448, 24 L. Ed. 760, it was said:

> "*There is no more important provision in the Federal Constitution than the one which prohibits states from passing laws impairing the obligation of contracts, and it is one of the highest duties of this court to take care the prohibition shall neither be evaded nor frittered away.* Complete effect must be given to it in all its spirit. The inviolability of contracts, and the duty of performing them, as made, are foundations of all well-ordered society, and to prevent the removal or disturbance of these foundations was one of the great objects for which the Constitution was framed."

Authority for the District Court to direct such action as was necessary to prevent a violation of Section 10, Article 1 of the Constitution of the United States, prohibiting the impairment of contracts, and the Fourteenth Amendment of the Constitution of the United States prohibiting a deprivation of property without due process of law, under such circumstances as those existing in the case at bar, will be found in *Mobile* v. *United States*, 116 U. S. 289, 6 S. Ct. 398, 29 L. Ed. 620, holding that if the taxing powers of the successor municipal corporation are less extensive than those of the old, the statutes authorizing the assessment of taxes which were in force when the obligation was incurred will be treated as still in force and officers of the new corporation will be directed to levy a tax thereunder. There, speaking through Mr. Justice Woods, the Supreme Court, said:

> "The laws which establish a local municipal corporation cannot be altered or repealed so as to invade the constitutional rights of creditors • • •

"Therefore, the remedies for the enforcement of such obligations assumed by a municipal corporation, which existed when the contract was made, must be left unimpaired by the Legislature, or if they are changed a substantial equivalent must be provided. *Where the resource for the payment of the bonds of a municipal corporation is the power of taxation existing when the bonds were issued, any law which withdraws or limits the taxing power and leaves no adequate means for the payment of the bonds is forbidden by the Constitution of the United States, and is null and void. Von Hoffman* v. *Quincy,* 4 Wall. 535 (71 U. S. Bk. 18, L. Ed. 403); *Edwards* v. *Kearzey,* 96 U. S. 595 (Bk. 24 L. Ed. 793); *Ralls County Court* v. *United States and Louisiana* v. *Pilsbury,* 105 U. S. 733, 278 (Bk. 26, L. Ed. 1220. 1090); *Louisiana* v. *Mayor of New Orleans,* 109 U. S. 285 (Bk. 28, L. Ed. 936). These propositions receive strong support from the decisions of the Supreme Court of Alabama. *Comrs. of Limestone County* v. *Rather,* 48 Ala. 433; *Edwards* v. *Williamson,* 70 Ala. 145; *Slaughter* v. *Mobile County,* 73 Ala. 134.

"It follows that the contract by which, under authority of the Legislature, the City of Mobile agreed to levy a special tax for the payment of the principal and interest of the class of bonds to which those held by the plaintiff belong is still in force, and its obligation rests upon its legal successor, the Port of Mobile.

"All laws passed since the making of the contract, whose purpose or effect is to take from the City of Mobile or its successors, the power to levy the tax and pay the bonds, are invalid and ineffectual and will be disregarded. Mr. Justice Field, when delivering the judgment of this court in *Wolff* v. *New Orleans,* 103 U. S. 358 (Bk. 26, L. Ed. 395), said: 'The courts, therefore, treating as invalid and void the legislation abrogating or restricting the power of taxation delegated to the municipality, upon the faith

of which contracts were made with her and upon the continuance of which alone they can be enforced, can proceed, and by mandamus compel, at the instance of the parties interested, the exercise of that power, as if no such legislation has ever been attempted.' And so in *Ralls County Court* v. *United States,* 105 U. S. 733, (Bk. 26, L. Ed. 1220), it was said by the chief justice speaking for the court, that 'All laws of the state which have been passed since the bonds in question were issued, purporting to take away from the county courts the power to levy taxes necessary to meet the payments, are invalid; and under the well-settled rule of decision in this court the Circuit Court had authority, by mandamus, to require the county court to do all the law, when the bonds were issued, required it to do to raise the means to pay the judgment, or something substantially equivalent.'"

It will be found that the case of *Perryman* v. *City Home Builders,* 121 Okla. 154, 248 Pac. 605, is in point with the foregoing. In that recent case, the Supreme Court of Oklahoma, speaking through Mr. Justice Lester, has discussed the question, in a lucid opinion, and cited the authorities in connection therewith. It was said:

"Under the provisions of the law providing for local improvements, bonds were issued and the assessments made for purpose of paying the bonds, and the state having made the assessments on property co-equal with other taxes for the purpose of meeting the bonded obligations, cannot by subsequent legislation strike down the rights of such lienholders without having made due provision for the protection of their liens. *They obtained certain rights under and by virtue of the statute which was in force at the time their contracts were entered into.* For the laws existing at the time of the issuance of the bonds, and under the authority of which they were issued, '*enter*

into and become a part of the contract in such a way that the obligation of the contract cannot thereafter be in any way impaired or its fulfillment hampered or obstructed by a change in the law.' *Moore, County Treasurer* v. *Otis, et al.* (C. C. A.), 275 F. 747, *supra; Wolff* v. *New Orleans,* 103 U. S. 358, 26 L. Ed. 395; *Ft. Madison* v. *Ft. Madison Water Co.,* 134 F. 214, 67 C. C. A. 142; *Hicks* v. *Cleveland,* 106 F. 459, 45 C. C. A. 429; *City of Austin* v. *Cahill,* 99 Tex. 172, 88 S. W. 542, 89 S. W. 552; *Seibert* v. *Lewis,* 122 U. S. 284, 7 S. Ct. 1190, 30 L. Ed. 1161; *Edwards* v. *Kearzey,* 96 U. S. 595, 24 L. Ed. 793; *Louisiana* v. *New Orleans,* 102 U. S. 203, 206, 26 L. Ed. 132; *Rolls (Ralls) Co. Court* v. *U. S.,* 105 U. S. 733, 26 L. Ed. 1220; *Louisiana* v. *Pilsbury,* 105 U. S. 278, 26 L. Ed. 1090; *Gibbons* v. *Hood River Irr. Dist.,* 66 Or. 208, 133 P. 772; *Oatman* v. *Bond,* 15 Wis. 22; *Barker* v. *Muchlin (Muehler),* 55 Wash. 411, 104 P. 637; *Goodale* v. *Fennell,* 27 Ohio St. 426, 22 Am. Rep. 321; *Ogden* v. *Saunders,* 12 Wheat. 213-302, 6 L. Ed. 606; *McCracken* v. *Hayward,* 2 How. 608, 11 L. Ed. 397; *Curran* v. *State of Arkansas,* 15 How. (U. S.) 304, 14 L. Ed. 705; *Planters' Bank* v. *Sharp,* 6 How. 327, 12 L. Ed. 447; *Von Hoffman* v. *City of Quincy,* 4 Wall. 535, 18 L. Ed. 403; *Mobile* v. *Watson,* 116 U. S. 305, 6 S. Ct. 398, 29 L. Ed. 620."

The case of *Ensley* v. *Simpson,* 166 Ala. 366, 52 So. 61, is in point with the foregoing. It was there said:

"It has been settled that the remedies for the enforcement of obligations assumed by municipal corporations which existed when the contract was made cannot be impaired by the Legislature, or, if they are changed, a substantial equivalent must be provided. 'Where the resource for the payment of the bonds of a municipal corporation is the power of taxation existing when the bonds were issued, any law which withdraws or limits the taxing power and

leaves no adequate means for the payment of the bonds is forbidden by the Constitution of the United States, and is null and void.' *Mobile* v. *Watson* (1886), 116 U. S. 289, 29 L. Ed. 620, 6 Sup. Ct. Rep. 398, and authorities there cited. To the same effect are decisions of this court: *Amy* v. *Selma* (1884), 77 Ala. 103; *Slaughter* v. *Mobile County* (1882), 73 Ala. 134; *Edwards* v. *Williamson* (1881), 70 Ala. 145; *Commissioner's Ct.* v. *Rather* (1872), 48 Ala. 433."

The principle here under discussion was applied in the case of *Meyer* v. *Brown*, 65 Cal. 583, 26 Pac. 281, wherein the court held:

"The bonds carried with them the pledge of an annual tax, for municipal purposes, on all real and personal property within the city limits, except such as is exempt by law, of 100 cents on the 100 dollars, 55 per cent of which is to be set apart and appropriated to an interest and sinking fund, to be applied to the payment of the annual interest upon the bonds, and to their final redemption. The tax was the chief security offered the creditors as an inducement to accept the bonds in payment of their claims. When the bonds for whose payment, with interest, provision was thus made, were issued and accepted by the creditors of the old city government, a contract was made as solemn and binding and as much beyond subsequent legislation as it would have been if made between private persons."

If the state court decided the principal question with which we are here concerned at all, it is manifest from the authorities cited that it did not decide the question correctly, and the District Court was without alternative but to reject the conclusions of the state tribunal, and to grant the bond holders relief to which they were en-

titled under the Constitution of the United States, and the Circuit Court of Appeals properly affirmed the final decree of the District Court.

POINT E.

Both the District Court and the Circuit Court of Appeals of the United States for the Fifth Circuit properly held that the petitioners were guilty of laches in connection with the issuance and validation of the bonds, so as to be estopped.

The record discloses that a statutory bond validation proceeding, resulting in a decree of validation, was instituted in the Circuit Court of Dade County, by the municipality, pursuant to Section 3296, *et seq.*, Revised General Statutes of 1920, as amended, now Section 5106, *et seq.*, Compiled General Laws of 1927, the said section being as follows:

> "3296. By Petition in the Circuit Court—When any county, municipality, taxing district, or other political district or subdivision, desiring to incur any bonded debt or to issue certificates of indebtedness, shall hold an election for that purpose in accordance with the provisions of the laws of this State controlling and regulating such elections, and the returns of such election shall show *prima facie* that such election is in favor of the issuance of said bonds or certificates, or when any county, municipality, taxing district, or other political district or subdivision shall adopt any ordinance or resolution, or take any other action required, by law, for incurring any bonded debt or issuing certificates of indebtedness under the laws of this State, such county, municipality, taxing district, or other political district or subdivision shall have the right, if it deems it expedient, to determine

its authority to incur bonded debt or to issue certificates of indebtedness and the legality of all proceedings had or taken in connection therewith, by filing a petition against the State of Florida in the Circuit Court of the county in which such election has been held or other proceedings have been had or taken."

If the petitioners had seen fit, they could have intervened in the validation suit for the purpose of raising any pertinent question as to the character of the territory included, and as to the regularity and validity of the incorporation proceedings. By reason of their failure to do so, they are estopped from asserting that the municipality was not at least a *de facto* organization throughout the territory which included their lands. We refer, in this connection, to the fourth official headnote in the case of *Weinberger* v. *Board of Public Instruction of St. Johns County,* 93 Fla. 470, 112 So. 253, as follows:

"Any matter or thing affecting the power of authority of the several political subdivisions mentioned in Section 3296, Rev. Gen. Stats. 1920, to issue bonds, or the regularity or legality of their issue, including questions of both law and fact, in so far as those matters or things could be lawfully prescribed, regulated, limited, or dispensed with by the Legislature in the first instance, or subsequently cured by a validating act, may be put in repose by a decree rendered pursuant to Section 3296, *et seq.*, Rev. Gen. Stats. 1920. So, also, may *constitutional rights or privileges which are designed solely for the protection of property rights of the individual concerned,* and which he may *waive* or with reference to which he may estop *himself,* or as to which the Legislature may lawfully limit the period of time within which such right or privilege may be exercised."

We wish to mention in the case of *Speer* v. *Board of County Commissioners,* 88 Fed. 749, 32 C. C. A. 101 (text 116), where it is said:

> "The interests of the public which depend upon such municipalities, the rights and relations of private citizens which become vested and fixed in reliance upon their existence, the intolerable injustice and confusion which must result from an *ex post facto avoidance* of their acts, commend the justice, and demand the enforcement, of the rule that *'when a municipal body has assumed, under color of authority, and exercised, for any considerable period of time, with the consent of the state, the powers of a public corporation, of a kind recognized by the organic law, neither the corporation nor any private party can, in private litigation, question the legality of its existence.' National Life Ins. Co.* v. *Board of Education of Huron,* 27 U. S. App. 244, 259, 10 C. C. A. 637, 647, and 62 Fed. 778, 787; *Ashley* v. *Board,* 16 U. S. App. 656, 671, 8 C. C. A. 455, 461, and 60 Fed. 55, 61; *People* v. *Maynard,* 15 Mich. 463, 470; *School District No. 25* v. *State,* 29 Kan. 42, 49, 50; *City of St. Louis* v. *Shields,* 62 Mo. 247, 252; *State* v. *Carroll,* 38 Conn. 449, 471; *State* v. *Rich,* 20 Mo. 393, 396; *Clement* v. *Everest,* 29 Mich. 19, 23; *Donough* v. *Hollister,* 82 Mich. 309, 46 N. W. 782, 783; *Carleton* v. *People,* 10 Mich. 250; *Clark* v. *Com.,* 29 Pa. St. 129; *Com.* v. *McCombs,* 56 Pa. St. 436."

It is true that the judgment of ouster in the Mahood case *recited* that the territory east of the Bay never became a part of the municipality, but *that matter was not in issue,* and such recital was mere surplusage. 51 C. J. 361. This is true notwithstanding the fact that such recital by way of surplusage was the predicate upon

which the Supreme Court of Florida made its decision in the Alta Cliff Company case.

The rule is stated in American & English Encyclopedia of Law, 2d Edition, Volume 23, pages 628, 629, to be as follows:

> *"The judgment creates no new rights but merely declares existing ones. A judgment of ouster is not retroactive so as to affect or destroy acts done or contracts made prior to its rendition, and recitals to that effect in the judgment may be disregarded as surplusage."*

The case of *People ex rel. Mercer* v. *Zaring*, 305 Ill. 503, 137 N. E. 481, is in line with the foregoing. It was there said:

> "The court would not have been warranted in holding up the collection of the tax levied to pay the expenses of the operation of the school until the determination at some future time and in a different proceeding, whether the district was a legally organized district. In *Howard* v. *Burke*, 248 Ill. 224, 93 N. E. 775, 140 Am. Rep. 159, *it was held that a tax levied for a township high school by a de facto school of education which assumed to act under the authority of an election would not be enjoined in equity in the absence of fraud, even though a judgment of ouster was entered against the members of the board in a quo warranto proceeding after the tax was levied."*

In the case of *Bray* v. *Payne*, 210 Cal. 465, 292 Pac. 478, part of a judgment of ouster in a *quo warranto* pro-

ceeding against a municipality assuming to determine the status of territory involved upon ouster of the municipal franchise was declared to be beyond the legitimate issues in the proceeding, and was held void. It was there declared that the judgment was not, and could not be retroactive, and that it had no legal effect upon the prior exercise of municipal functions by the defendant. It was said:

> "It cannot be questioned that, by reason of the completion of the consolidation proceeding and the admitted exercise of the municipal franchise in said territory by the City of Los Angeles, the consolidated city is *de facto* as to its exercise of control over said territory. Whether its jurisdiction be *de facto* or *de jure* might have been questioned in an appropriate proceeding under Sections 803-810 of the Code of Civil Procedure (*Coe* v. *City of Los Angeles*, 42 Cal. App. 479, 183 Pac. 822). But such a proceeding was not instituted. Petitioner's contention is that such an inquiry is now foreclosed for the reason, it is claimed, that the question of whether said territory is incorporated or unincorporated is *res judicata*. The argument is grounded on the postulate that the judgment of August 9th, wherein said territory was declared to be and established as 'unincorporated territory of Los Angeles County,' has become final and binding upon the City of Los Angeles as the successor in interest of the City of Barnes City. *But the question whether said territory was incorporated or unincorporated was not within the issues which could be determined in said quo warranto proceeding. The only issue properly involved therein was whether the City of Barnes*

City was usurping, intruding into, or unlawfully holding or exercising the municipal franchise at the time of the commencement of the action, to-wit, on February 14, 1927. *People* v. *Perrin*, 56 Cal. 345, 349. *When the judgment of August 9th assumed to declare the status of the territory upon the completion of the ouster, it proceeded beyond the bounds of the legitimate issues of the complaint. That part of the judgment is void for all purposes. Baar* v. *Smith*, 201 Cal. 87, 255 P. 827. *It cannot operate as an adjudication of the status of the territory and must be disregarded.*

* * * *

"As above stated, the favorable vote on consolidation in the City of Barnes City was recorded before the *quo warranto* proceeding was commenced and thereafter was carried to completion. *The final judgment of ouster was not retroactive and had no legal effect upon the exercise of the municipal function prior to the entry of the judgment. Reclamation District No. 765* v. *McPhee*, 13 Cal. App. 382, 109 P. 1106. There is nothing in the Consolidation Act to prevent a *de facto* municipal corporation from effectually participating in an act of consolidation and we are referred to no precedent to the effect that it may not."

Therefore, it is respectfully submitted that the decisions of the Florida courts have not altered the situation, with respect to the question now under consideration.

IV.

CONCLUSION.

In the record of this case it clearly shows that the Circuit Court of Appeals did not err in affirming the judgment of the District Court, because:

1.

The decisions of the Supreme Court of Florida, upon the points of law involved in this case, are in conflict.

2.

The Circuit Court of Appeals was not bound to follow the decision of the Supreme Court of Florida in the *Leatherman, et al.* v. *Alta Cliff Company, et al.* case (114 Fla. 305, 153 So. 844), to the effect that lands east of Bay Biscayne, actually included within the corporate limits of the Town, were never *de jure,* nor *de facto,* in the Town of North Miami (formerly known as Town of Miami Shores), because:

(a) Said decision was mere *obiter dictum as to* the words "nor *de facto* in the Town."

(b) It was based on the decision in the case of *Mahood, et al.* v. *State ex rel. Davis, Attorney General, et al.,* 101 Fla. 1254, 133 So. 90, which was a *quo warranto* proceeding where the *only* question for determination was whether the lands east of Biscayne Bay included within the corporate limits of the Town of North Miami were *de jure* in the Town—and not whether the lands east of Biscayne Bay included within the corporate limits of the Town were *de facto* in the Town, and the decision was necessarily limited to this one question. (See *State ex rel. Landis* v.

Pravatt (110 Fla. 29), 148 So. 578, 580 and also, Corpus Juris Vol. 51, p. 361, Par. 84, quoted under Point B of this brief.)

(c) It was in conflict with earlier and later decisions of the Supreme Court of Florida. (See Town of *Enterprise* v. *State* (29 Fla. 128, 10 So. 740); and *West* v. *Town of Lake Placid*, 97 Fla. 127, 120 So. 361, and other authorities cited and quoted under Point B of this brief.)

(d) The rights of bond holders were not involved in the decision of the Supreme Court of Florida, in either the *Mahood* case, or the *Alta Cliff* case, and neither of said decisions is *res judicata* or binding upon the right of municipal bond holders.

(e) The Supreme Court of Florida has refused to follow the *Alta Cliff* case, in a suit *involving the rights of bond holders*, and expressly declared that a prior judgment of ouster was not retroactive and that a "*quo warranto* judgment must be construed as having a *prospective* operation *only*, in so far as past incurred and duly validated municipal bonds of the ousted or dissolved municipal corporation is concerned." (See *State ex rel. Fidelity Life Ass'n* v. *City of Cedar Key*, 165 So. 672, and other authorities cited and quoted under Point B of this brief.)

3.

The Circuit Court of Appeals did not err in refusing to follow the decision of the Florida Supreme Court in the *Leatherman, et al.* v. *Alta Cliff Company, et al.* case, *supra*, for the reason that to have followed said decision would have involved the impairment of the obligation of contracts, in violation of the restraints of the Federal Constitution. (See *Humphreys, et al.* v. *State ex rel. Palm Beach County*, 108 Fla. 92, 145 So. 859, cited and

quoted under Point C of this brief, and also, *Clapp* v. *Otoe County*, 104 Fed. 473, cited and quoted under Point D of this brief, and the other pertinent authorities cited and quoted under Point D of this brief.

4.

The Circuit Court of Appeals properly followed the decision of the Supreme Court of Florida in the case of *State ex rel. Fidelity Life Ass'n* v. *Cedar Key, supra,* and would have fallen into error had it attempted to follow the earlier decision in the case of *Leatherman* v. *Alta Cliff, supra.*

5.

It is not shown that the Circuit Court of Appeals has decided any important question of general law in a way probably untenable and in conflict with the weight of authority, and it affirmatively appears from the record that the decision of the Circuit Court of Appeals is not in conflict with any of the decisions cited by petitioners, except the case of Leatherman vs. Alta Cliff Company, which last mentioned decision was not controlling, but entirely out of harmony with other decisions of the Supreme Court of Florida, as well as the weight of authority elsewhere.

6.

The Town of North Miami became a *de facto* municipality throughout the entire territory described in the original Articles of Incorporation, and continued as such, to have jurisdiction over the same territory *until* the

judgment of ouster was entered, and the lands included within said *de facto* municipality became and are liable for the payment of municipal bonds issued, validated and sold prior to the judgment of ouster. (See authorities cited and quoted under Point C of this brief.)

7.

Both the District Court and the Circuit Court of Appeals of the United States for the Fifth Circuit properly held that the petitioners were guilty of laches in connection with the issuance and the validation of the bonds so as to be estopped. (See authorities cited and quoted under Point E of this brief.)

WHEREFORE, we respectfully submit that the Circuit Court of Appeals properly affirmed the final decree of the District Court, and that the judgment of the Circuit Court of Appeals should be affirmed.

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19th Floor Congress Bldg.,
Miami, Florida,

Solicitors for Town of North Miami, et al., Respondents, other than Brown-Crummer Investment Company.

APPENDIX.

Sections 1825, 1826, 1827, 1828 of the Revised General Statutes of Florida, 1920, providing for the incorporation of a town by mass meeting:

"1825. Number of inhabitants necessary to incorporate.—It shall be lawful for the male inhabitants of any hamlet, village or town in this State, not less than twenty-five in number, who shall have the qualifications hereinafter prescribed to establish for themselves a municipal government with corporate powers and privileges as hereinafter provided.

"1826. Distinction between cities and towns.—Whenever any municipal government is established, and it shall appear that there are three hundred registered voters within the limits hereby to be designated, it shall be and the same is hereby incorporated and designated as a city, entitled to the privileges of a city. All municipal governments having a less number of voters than those named above shall be and the same are hereby designated and declared incorporated towns, entitled to the privileges and rights of incorporated towns.

"1827. Publication of notice to assemble and organize.—Whenever any community of persons shall desire to form a municipal corporation under the provisions of this chapter, they shall, for a period of not less than thirty days, cause to be published in some newspaper of the county, or by posting in three places of public resort in the immediate vicinage, a notice requiring all persons who are registered voters, residing in the proposed corporate limits, which shall

be stated in this notice, to assemble at a certain time and place to select officers and organize a municipal government.

"1828. Proceedings of meeting.—At the same time and place designated in the notice aforesaid, the qualified electors present, being not less than two-thirds of those whom it is proposed to incorporate, and not less than twenty-five in number, shall select a corporate name and seal for the municipality which they propose to form, and designate by definite metes the bounds and territorial limits thereof. They shall then proceed to choose by a vote of a majority of the said electors a mayor and not more than nine and not less than five aldermen, who shall be known as the city council, and in whom shall vest the government of the city. There shall also be chosen at the same time and place, and in like manner, a city clerk and a marshal. The mayor, clerk and the marshal shall continue in office for the period of one year from the date of their election, or until their successors are elected and qualified: Provided, That the metes and bounds in this section shall not in any case apply to the fixing or establishing the boundary lines of towns and cities now or heretofore incorporated by the now existing laws of this State."

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Supreme Court of the United States

October Term, 1937

No. 10

OCEAN BEACH HEIGHTS, INC.
NORMANDY BEACH DEVELOPMENT COMPANY, ET AL.,
Petitioners,

versus

THE BROWN CRUMMER INVESTMENT COMPANY, TOWN OF NORTH MIAMI, ET AL.,
Respondents

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF OF RESPONDENTS

I

Opinions Below

The opinion of the Circuit Court of Appeals in this case is reported in 87 Fed. (2d), pages 978 to 981. The opinion of the District Court on motion to dismiss the bill is reported in 11 Fed. Supp., page 73. Other opinions relating to the same controversy are reported in 11 Fed. Supp., page 69, and 69 Fed. (2d) 105.

II

Jurisdiction

Jurisdiction of the Federal Court was invoked by complainant, a citizen of Kansas, in a suit at law against the town, a Florida municipal corporation, upon bonds and coupons issued by the town. This suit is in equity:

(1) Ancillary to the judgment of the Federal Court in the suit at law and is in aid of the execution of a peremptory writ of mandamus issued by the Federal Court to enforce payment of such judgment, and

(2) A class suit under Federal Equity Rule 38 on behalf of all bondholders of the town to restrain defendant taxpayers from utilizing a judgment of ouster and an injunctive decree obtained in the State Court in suits against the municipality to which no bondholder was a party, to interfere with the levy of taxes by the town and its officials for the payment of the principal and interest accrued and to accrue upon bonds issued by the town; on the ground that the enforcement of the decrees of the State Court would impair the obligation of the bond contracts of the town, would deprive complainant and other bondholders of their property without due process of law contrary to the Constitutions of Florida and of the United States; and would be contrary to the recognized principles of equity and standards of good conduct.

III

Statement of the Case

The City of Miami, the largest winter resort in the Eastern section of the United States, was in 1926 the center of a real estate boom. Property adjacent to its limits had a speculative value because it was within the bounds of future

expansion. The owners of territory adjacent to and North of the City of Miami, acting under the general statutes of Florida, organized a town under the name of Miami Shores (since changed to North Miami) including lands on both sides of Bay Biscayne. The purpose of such incorporation was to provide municipal facilities and avoid the high rate of taxation that would have resulted if the territory had been annexed to Miami or Miami Beach.

The town was organized in 1926 under Sections 1825 to 1928 of the Rev. Gen. Stats. of Florida of 1920, Sections 5106 to 5112, Compiled General Laws of Florida, 1927. It issued bonds, of which $238,000 principal were outstanding at the time the bill was filed. Principal in the amount of $88,000 and interest amounting to $50,145 was past due. The answers of Ocean Beach Heights and Normandy Beach Development Company who are owners of property East of the Bay, admit the incorporation, the validity of the statutes under which the town was organized, that the town attempted to include the area of land East of the Bay, and that it exercised all of its functions and powers over land West of the Bay. (R 65). The Master, (R 368) and the District Judge, (R 379) found that the town also exercised municipal functions over all territory *East of the Bay* by collecting garbage, providing police and fire protection, repairing streets, enforcing building restrictions, issuing building permits, etc. The Master and the District Judge specifically found, (R 371-2) that the town assessed, levied and collected taxes from the *entire area (both East and West of the Bay) included in the act of incorporation from the date of its organization down to and including the year* 1934. See assessed values, tax levies and collections, (R 37-2 and 383-4). No testimony was offered by the Defendant to contradict the evidence of the Complainant. We especially call attention to Plaintiff's Exhibit 5 (R 237-42) showing that Ocean Beach Heights by its present attorney, Judge Sutherland, in April, 1929, applied to the Town Council for a change in location of Collins Avenue. The Council authorized

the change upon representations to it that improvements amounting, in value, to five or ten million dollars would be made upon the property. We also call attention to Plaintiff's Exhibits 2 and 3 (R 211 and 224). Ocean Beach Heights purchased its property from Tatum's Ocean Park Company in July, 1929. That Company in its sworn bill of complaint, filed in the Circuit Court October 22nd, 1927, admitted that its property was within the town of Miami Shores. Normandy Development Company also swore to a bill of complaint which admitted that its property was within the town.

By 1928 the boom was over and taxes began to be a burden. In July 1929 the Attorney General, in the name of the State of Florida, at the request of certain taxpayers who were joined as co-relators, among them being Normandy Beach Development Company, instituted an action of quo warranto in the State Court to oust the city and its officials from jurisdiction over land East of Bay Biscayne. (R 84-92). Ocean Beach Heights was not one of the relators. Its predecessor in title, Tatum's Ocean Park Company, later became a party by intervention by an order dated December 17th, 1931, (R 343). The town and its officials filed an answer to the information, (R 306-326) motion for judgment notwithstanding was filed, (R 327) and an order for judgment, (R 329). Judgment of ouster was rendered March 31st, 1930, (R 335).

From this judgment a writ of error was taken to the Supreme Court of Florida, (R 336), and that Court by its mandate, (R 338) reversed the judgment of ouster, (Opinion reported in 133 So. 90, 101 Fla. 1254). The case was tried December 17th, 1931 and the Circuit Judge directed a verdict in favor of the relator and co-relators (R 353-5) holding that the attempted inclusion of lands East of Bay Biscayne in said town was "illegal, null and void and without warrant or authority of law". Motion for a new trial, (R 356-8) was overruled, (R 359) and no appeal was taken from that judgment.

On July 8, 1930 (Complainant) Respondent instituted a suit at law against the town in the District Court of the United States upon nine past due bonds and ninety-three past due coupons, (R 286). One bond was of an issue dated March 1, 1928; one was of another issue dated March 1, 1928; seven were of an issue dated April 1, 1927. The coupons were from bonds dated January 1, 1927 (R 286-93). Final judgment in the sum of $11,790.00 was entered against the town June 19, 1931 (R 283). No appeal was taken from this judgment. On October 7, 1931 the judgment creditor (Respondent) obtained from the District Court of the United States an alternative writ of mandamus requiring the city and its officials to levy a tax for the payment of the judgment (R 13). Before the peremptory writ was issued, certain persons owning property East of the Bay applied to the District Judge for leave to intervene in the mandamus proceeding. Leave to intervene was granted. Answers were filed and parts of them were stricken by order of the District Judge. See opinion in United States ex rel Brown Crummer Inv. Co. v. Town of North Miami, 11 Fed. Supp. 69. Testimony was taken and the District Judge, following his opinion, (R 44) issued a peremptory writ January 24, 1933, (R 203), commanding the town and its officials

> "to levy a tax on all taxable, assessable property within said Town of North Miami, formerly Miami Shores, including the property described in paragraph 6 of the alternative writ of mandamus more particularly described as"

(then follows a description of the property lying East of the Bay according to the metes and bounds description used in the Information) (R 303-4). Property owners appealed to the Circuit Court of Appeals from the peremptory writ. Their appeal was dismissed. Normandy Beach Development Co. et al v. United States ex rel Brown Crummer Inv. Co., 69 Fed. (2d) 105. Neither the town nor its officials entered an appeal. The peremptory writ has been final since January 24, 1933 *and no further attack has been made upon the peremptory writ by any property owner.* The record

(R 185-87) and Exhibits 13, 14, 15, 16 and 17, (R 254-82) show that the town continued to levy taxes against all assessable property, including the property East of the Bay, and no proceedings were ever instituted to restrain such levy or the enforcement of such taxes until a bill was filed in Alta Cliff v. Leatherman. In April, 1933 a special levy of 4½ mills on all property, both East and West of the Bay was made in response to the writ expressly for the judgment creditor. (R 252, Ex. 12). A large part of that tax levy was collected.

The judgment creditor (Respondent) filed this bill of complaint in the District Court for the Southern District of Florida on December 1, 1934 (R 1). The purposes of the bill are shown in the prayer (R 22-25); for an injunction to restrain the taxpayers named as defendants from preventing the assessment, levy and collection of taxes which might be levied by the town for the payment of the judgment or for the payment of interest and principal upon any bonds that had been issued by the town, to enjoin the town officials from refusing or failing to perform the duties in the levy and collection of taxes required by the peremptory writ and by the contract contained in the bonds; and to restrain the prosecution of certain actions that had been instituted by Defendants in the State Court, and the enforcement of the injunction issued in Alta Cliff Company v. Leatherman (affirmed by the Supreme Court of Florida March 31st, 1934, 153 So. 845, 114 Fla. 305).

Answers were filed by the town and its officials (R 29-48), by Ocean Beach Heights (R 64-103), and by Normandy Beach Development Company (R 105-123). Testimony was taken. Master's Report was made (R 368) and final decree was rendered by the District Judge (R 389) granting the prayers of the bill. Defendants appealed to the Circuit Court of Appeals (R 403), which affirmed the decree of the District Court (R 429 et seq.).

IV.

The Issues Involved

The record presents no issue of fact. The findings of the Master (R 368 et seq.) and the findings of fact and conclusions of law of the District Judge (R 378 et seq.) disposed of all such issues. The issues here are of law.

The case presents a twofold aspect.

1. By Complainant in its own right as the holder of an unpaid judgment obtained in the Federal Court against the town, to enforce payment of which a peremptory writ of mandamus has been issued commanding the officials of the town to levy a tax against all of the taxable property which was included within its boundaries as fixed by the act of incorporation. Complainant individually seeks to enjoin the use by Defendants of the judgment of ouster and the injunction issued by the State Court for the purpose of preventing compliance by the officials of the town with the commands of the peremptory writ. The bill in this aspect is *ancillary to the writ* of mandamus and in *aid of its execution.*

2. The bill also presents a case under Rule 38 of the Federal Equity Rules - a class suit brought on behalf of all bondholders of the town to protect the town officials in the levy and collection of taxes for the payment of principal and interest accruing upon the bonds, whether reduced to judgment or not, from the effect of the State Court's decrees. In this aspect the bill is an original one.

V.

Argument

1.

The Bill, as ancillary to the judgment at law and the peremptory writ of mandamus, is brought to protect process of the Federal Court.

The question raised by the bill in this respect is:

> Whether a Federal Court that has issued a peremptory writ of mandamus commanding the officials of a town to levy a tax against *all of the taxable property included within the boundaries* of a town as fixed by its act of incorporation, can enjoin interference with the duties required of the town officials by the writ to be performed although such interference results from a judgment of a State Court ousting the officials of the town from jurisdiction over part of the area or from an injunction by the State Court restraining the enforcement of taxes in such area, the judgment creditor not having been a party to either suit in the State Court.

Complainant having obtained a judgment in the Federal Court which is now final (R 283) and having obtained a peremptory writ of mandamus to enforce payment of the judgment, (R 203) (Plaintiff's Exhibit 1) the writ being final, this proceeding is ancillary to the judgment and to the writ, to protect the officials of the City in the performance of the duties required of them by the writ, - namely the levy and collection of taxes from the entire area that was within the boundaries of the town.

The bonds described in the first three counts of the declaration (R 286-291) recited that they were issued "in strict conformity with the Constition and Laws of Florida"; that "for the payment of the same the full faith and credit of the Town of Miami Shores was pledged"; that "*provision was made for the levy and collection each year*, while any of said bonds were outstanding and unpaid, *of sufficient*

taxes on all taxable property in said town to pay the principal and interest". The bonds described in the fourth count (R 292) recite that the issuance of them had been approved at an election held in compliance with the Laws of Florida;

> "that all acts, conditions and things required to exist or be done precedent to and in the issuance of this bond, under the Constitution and Laws of Florida, had happened, existed and been performed",

and that

> "provision *had been made for the levy and collection of a direct annual tax upon all taxable property within said town,* sufficient to pay the interest and principal of this bond as the same shall become due".

All of these bonds were "validated and confirmed by decrees of the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida" (R 286-293). Plaintiff's Exhibit 4 (R 295). The Charter of the City and Chapter 9298, Acts of 1923, authorized the issuance of these bonds. Therefore, the peremptory writ (R 203-10) requiring the levy of a tax

> *"on all taxable, assessable property within said town of North Miami, formerly Miami Shores, which would produce a sum sufficient to pay the judgment"*,

merely required performance of the pledges contained in the bonds for the purpose of enforcing payment of the judgment. The property specially described in the writ is the property East of the Bay and was "within the town" of Miami Shores when its bonds were issued (R 302). The writ therefore only commanded the City to do that which it was obligated to do.

By the judgment at law (Entered June 19, 1931 (R 283) and which was unlimited, and by the alternative writ (Issued October 7th, 1931) plaintiff acquired vested rights before judgment of ouster was entered by the State Court (December 18th, 1931). City of Memphis v. U. S. ex rel Brown, 97 U. S. 293, 24 L. Ed. 920.

A writ of mandamus to compel the levy of a tax to pay a judgment

> "cannot be had on application to a ministerial officer. It can only issue after a judgment of the Court to that effect in an independent adversary proceeding instituted for that special purpose. Such a judgment is a final judgment in a civil action".

Davies, et al. v. U. S. ex rel Corbin, et al, 112 U. S. 36 (p. 40), 28 L. Ed. 627.

Being a final judgment, a right of appeal existed. No appeal was taken by the town or its officials. No proceeding has ever been filed by the town or its officials to seek a modification of the terms of the writ. No direct attack has ever been made upon the peremptory writ by a property owner.

Therefore, since the judgment upon the bonds and coupons and the judgment embodied in the peremptory writ have long since become final as against all parties, it can not be *collaterally attacked* in this or any other proceeding. Cushman, et al. v. Warren-Scharf Asphalt Paving Company, 220 Fed. 857 (7 C. C. A.).

The effort of appellant to interfere with the enforcement of the peremptory writ is a collateral attack upon it.

> "A proceeding to enforce a judgment is collateral to the judgment and therefore no inquiry into its regularity or validity could be permitted in such a proceeding, whether it is a direct action on the judgment, ... or proceedings supplementary to execution, or bill in equity in aid of execution",

34 Corpus Juris, Section 828, pp. 522, 528.

In a proceeding by mandamus to compel the payment of a judgment or to compel the levy and collection of a tax to provide funds for payment, the judgment can not be questioned for such amounts to a collateral attack. Santa Fe County v. New Mexico, 215 U. S. 296, 54 L. Ed. 202;

Harshman v. Knox County, 122 U. S. 306, 30 L. Ed. 1152; United States ex rel Ranger v. New Orleans, 98 U. S. 381, 25 L. Ed. 225; City of Davenport v. U. S. ex rel Lord, 76 U. S. 409 19 L. Ed. 704.

In the same way any attack in this case upon the writ is collateral and is prohibited by the authorities cited. Complainant (Respondent) therefore had the right to apply to this Court for ancillary or supplemental relief to prohibit third parties acting under orders of a State Court from interfering with its process.

Protection of process of a Federal Court against interference by individuals or officials acting under the authority of State Court process, is an inherent right of the Federal Court, necessary to preserve its existence.

A writ of mandamus issued by a Federal Court pursuant to a judgment rendered by it against a municipality is neither a "prerogative writ nor a new suit". It is

> "a proceeding ancillary to the judgment which gives the jurisdiction and when issued becomes *a substitute for the ordinary process of execution to enforce the payment of the same,* as provided in the contract".

Since the

> "writ of mandamus is a remedy ancillary to the judgment and *is the proper process to enforce the payment of the same,* then there is an end of the argument, as it could not be contended that a State Court can enjoin such process of a Federal Court".

U. S. ex rel Riggs v. Johnson County, 73 U. S. 166, 18 L. Ed. 768. Other cases to the same effect are U. S. ex rel Weber v. Lee County, 73 U. S. 210, 18 L. Ed. 781; U. S. ex rel Thomas v. Keokuk, 73 U. S. 518, 18 L. Ed. 918; U. S. ex rel Moses v. Keokuk, 73 U. S. 514, 18 L. Ed. 933; Lee County v. Rogers, 74 U. S. 181, 19 L. Ed. 160.

Where the Relator to the writ was not a party to a proceeding in the State Court "it is not competent for a State

tribunal to paralyze process issued from the Court of the United States to give effect to its judgment". City of Davenport v. U. S. ex rel Lord, 76 U. S. 409, 19 L. Ed. 704

Even where a State Court has issued an injunction against the collection taxes before Relator obtains judgment in the Federal Court, the jurisdiction of the Federal Court having attached when the suit was filed, its right to issue is not affected. Washington County v. U. S. Ex rel Durant, 76 U. S. 415, 19 L. Ed. 732.

An injunction of a State Court restraining the collection of taxes is a nullity insofar as it purports to effect or interfere with process of a Federal Court issued to enforce payment of a judgment against the City. Amy v. Barkholder, 78 U. S. 136, 20 L. Ed. 101.

2.

The Bill in Its Original Aspect
Points of Law

The case is also a class suit brought under Federal Equity Rule 38, on behalf of Complainant and on behalf of "all other bondholders" (R 1) to obtain an order from this Court restraining defendant taxpayers from utilizing the judgment of ouster and the injunction decree to prevent the officials of the town from taking the steps and performing the acts necessary to pay the bonds and coupons issued by the town. A decision of this question involves the merits of the case. The points upon which we urge affirmance of the decision of the Circuit Court of Appeals are:

A. That the decisions of the State Court in Mahood et al v. State ex rel Davis, 101 Fla. 1254, 133 So. 90 and Leatherman et al v. Alta Cliff Company, 114 Fla. 305, 153 So. 845 were made after the bonds of the town were issued in cases to which neither this Complainant nor any other

bondholder was a party and the rights of bondholders against the town and its taxpayers were neither adjudicated, considered or even discussed therein.

B. The decrees of the State Circuit Court validating the bonds, having become final before the bonds were issued, are res adjudicata against the state and the taxpayers of the question of whether the property East of the Bay was within the boundary of the municipality.

C. Petitioners are estopped by matters in pais from denying, in an action by bondholders, that their lands were within the boundary of the municipality at the time the bonds were issued and cannot defeat the right of bondholders to have taxes levied against their lands for the payment of the bonds and coupons, where it appears that without such power, the town is unable to pay the debts so incurred.

D. The lands East of the Bay were de facto within the municipality at the time the bonds of the town were issued and as such were bound to the same extent as if they were de jure within the limits.

E. The dissenting opinion of Judge Sibley is predicated upon erroneous assumptions of law and of fact.

POINT A

Federal Court Not Bound to Follow Decisions of Florida Court

The principal argument made for reversal of the decision of the Court of Appeals is that the judgments and the decrees of the State Court in Mahood v. State, supra, and Leatherman v. Alta Cliff Company, supra, "must be followed by the Federal Court".

The argument when analyzed is a patent attempt to evade the real issue of law. Defendants do not have the effrontery to claim that the rights of bondholders have been

adjudicated by these decisions nor that these decisions of the State Court would, under the doctrine of "stare decisis" even control the Florida Supreme Court if this case were pending there. They admit that neither the complainant or any other bondholder was a party to the actions in the State Court and that they were not represented there. They could not have been. The quo warranto action was brought by the State of Florida out of the relation of the Attorney General joined by certain taxpayers, against the town and its officials. The injunction suit in the Alta Cliff case was predicated solely on the judgment of ouster and was brought by taxpayers against the Clerk of the Circuit Court and the town officials. The record in this case does not even show that the facts in evidence in the cases in the State Court were similar to the facts proved here or that those cases presented the same issues raised in this case. This Court must presume, therefore, that the facts and issues were not the same.

The duty of Federal Courts to follow decisions of State Courts arises primarily from the Conformity Act, Section 34, now Section 725 of Title 28 of the Judicial Code, but the purpose of the rule was to secure uniformity of rights and remedies in State and Federal Courts. If the decision of the State Court in those cases would not preclude consideration by it of the merits of a suit such as this, the claim that the Federal Court must, in this case, "follow the decisions of the State Court", is meaningless. The mere fact that this action is in a Federal Court does not of itself inhibit such Court from deciding the merits of the case, absent any estoppel by judgment or plea of res adjudicata.

Our position is that the rights of bondholders in this case must be decided upon the merits of the case made by them; that the fact the State Court has decided controversies arising between *taxpayers* and *town officials* subsequent to the issuance of the bonds, does not prevent this Court from *deciding the rights of bondholders* upon facts here

presented when it appears that no bondholders were parties to the State Court suits. This Court made this distinction in Chase National Bank v. Norwalk 291 U. S. 431, 78 L. Ed. 894, when it held that a judgment of ouster rendered by a State Court against a mortgagor did not bind a mortgagee whose interest was acquired before the commencement of the suit by the State unless it had been a party defendant to the ouster suit. For "the mortgagee is entitled to have a decision determining *his rights* rendered *on the basis of the facts and considerations adduced by him*". Even if a bondholder had been a party to one of the suits in the State Court this Court would have exercised its right to examine the record of the former case to see whether the issues were identical and, if they were not, would have decided this case according to its own independent judgment. "Obviously, the facts and circumstances affecting the trustees' (mortgagees') rights may be different from those presented to the State Court on behalf of the power company". Chase National Bank v. Norwalk, supra.

The position of municipal bondholders, while not identical, is analagous to that of mortgagees. The Supreme Court of Florida said in City of Clearwater v. State 108 Fla. 623, 147 So. 459:

> "Where bonds have been issued by a municipality with a provision for the levy of stipulated taxes to provide for their payment, the fund contracted to be raised by the agreed taxes is the foundation upon which the bonds themselves rest. The annual tax is the security offered to the creditors who take bonds under laws which constitute a special agreement on the part of the public corporation debtor to provide for their payment according to terms. And as the Supreme Court of the United States has said in the case of Louisiana v. Pilsbury 105 U. S. 278, 26 L. Ed. 1090; the annual tax ..... could not be afterward severed from the contract without violating its stipulations, any more than a mortgage executed as security for a note given for a loan could be subsequently repudiated as no part of the transact-

> ion. In other words, such bonds are but the present funding of the *necessary future* taxes contracted to be levied, in order to pay them off in due course, as to the stipulated principal and interest..... Bonds when issued are merely an anticipation of the taxes agreed to be provided to pay them".

We assert that the Supreme Court of Florida has held that rights of bondholders are not and *cannot be affected by a judgment of ouster* dissolving a municipal corporation in toto or excluding a part of its area where ouster proceedings are instituted after bonds have been issued and validated by the Courts of Florida.

In Humphreys et al v. State ex rel. Palm Beach Co. 108 Fla. 92, 145 So. 858, the Legislature had divided a town into two towns and had apportioned its indebtedness. The holders of bonds issued by the old town were granted a peremptory writ of mandamus requiring the levy of taxes by the officials of both towns against all property which was "within the town" (the original town) as it had existed at the time the bonds were issued. A note to the opinion says that "within said town" means "within it as it was defined a town by the then existing provisions of law". In other words the pledge ofa tax levy upon all taxable property "within the town" was held inseparable from the obligation. It is true that exclusion of a part of the lands of Boynton was by legislative act, while in this case exclusion is by judicial decree, but the principle underlying the decision is the same.

But as was said by the Texas Supreme Court in Payne v. First National Bank, 291 S. W. 209

> "The provisions of the State Constitution and of the statutes passed pursuant thereto conferring jurisdiction in quo warranto proceedings upon the District Court, will not be interpreted as embracing power to impair the obligations of valid contracts".

The Circuit Judge who entered the first judgment of ouster in this case, (R 334) said that "there were ample provisions by law and in equity to take care of" the bonded indebtedness of the town.

In State v. Coral Gables, 120 Fla. 492, 163 So. 308, a proceeding in quo warranto, Justice Buford, though he was of the opinion that the entire act of annexation was void, took pains to state that

> "the questions of the levy and collection of taxes to pay bonds *could not be adjudicated in this case because the bondholders are not parties*".

In Hillsborough County v. State, 113 Fla. 345, 151 So. 712 the Supreme Court, though it refused to validate refunding bonds of the county, because of the attack made upon the original bonds, held that it could not decide the rights of the original bondholders in the validation action because such holders were not parties.

In State v. Avon Park, 108 Fla. 641, 149 So. 409, an action in quo warranto, the Court expressly held that

> "as the bondholders are not party to this action then their rights, if any, with reference to lands included within the municipality when the bonds were issued, *are not affected* by the adjudication of this cause".

But we bottom our contention primarily upon the decision of the Florida Supreme Court in State v. Cedar Key, 122 Fla. 454, 165 So. 672, a parallel case. The Town of Cedar Key was incorporated under Chapter 6673, Acts of 1913, Chapter 9698, Acts of 1923 abolished the 1913 town and created the City of Cedar Key which embraced the same territory as that included by the act of 1913. The boundaries of the town of 1913 and the city of 1923 were more extensive than they had been under the old charter of 1890.

In 1934 an action of quo warranto was filed in the State Court and a final judgment of ouster was entered against the city and its officials on the ground that the acts

of 1913 and of 1923 were both void. Prior to the institution of that suit the city had in 1925 issued bonds while the act of 1923 was in force. A writ of mandamus was sought by a bondholder to enforce the levy of taxes to pay these bonds. The Court granted the peremptory writ, saying

> "Our conclusion is that as against the defense herein set up, the writ of mandamus must be awarded for the reason that the circuit court judgment of ouster rendered in a proceedings to which the relator bondholder was not a party, and by the result of which he did not become bound under the doctrine of virtual representation, cannot avail the respondents as a defense against the right asserted by relator to have such respondents judicially ordered to levy, assess, and collect the taxes undertaken by them to be pledged for the payment of the bonds and coupons issued by the city of Cedar Key, at a time when the said city of Cedar Key was at least a de facto municipal corporation whose status as a putative de jure corporation had not been duly challenged by the State of Florida at the time the city's bonds and coupons were floated and sold".

> "The judgment in quo warranto relied on as a defense in this case must therefore be construed as having been rendered by the circuit court in the light of section 5109, C. G. L., supra, and as not having any legal effect as an avoidance of the obligations validated or as an obstacle to the ordinary remedies available to a holder thereof for their enforcement against the municipality obligor thereon".

> "Such quo warranto judgment, as we have seen, must be construed as having a prospective operation only, in so far as past incurred and duly validated municipal bonds of the ousted or dissolved municipal corporation is concerned; no claim being made that the bonds in question are beyond the constitutional power of the State Legislature to authorize on the part of the municipality in any circumstnaces by mere legislation. The judgment in the quo warranto proceeding is to be presumed, as a matter of law, not to call in question matters expressly or impliedly settled or adjudicated in the bond validation proceed-

ing, the result of which, under section 5109, C. G. L. section 3299, R. G. S. could not be subsequently called into question indirectly in any Florida court, whether by means of a quo warranto suit or otherwise, instituted in the name of the state, or in the name of any other party bound by the decree of validation through actual or virtual representation in that cause".

The opinion distinguished between the right of the *state and taxpayers* to question the validity of charter acts and *the right of bondholders* to enforce the levy of taxes against property which was within the putative boundaries of the town at the time the bonds were issued, especially where the bonds had been validated by a decree of a court before action was begun by the State to attack the incorporation. The Court held that a judgment in quo warranto must be construed, "as having a prospective operation only, insofar as past incurred and duly validated bonds of ousted or dissolved municipal corporations is concerned". So the Court of Appeals in this case, following the decision in the Cedar Key case held that under the facts in this case the judgment of ouster not being binding upon the bondholders, "spoke only as to the future, determined that only from and after the ouster, the town did not exist de jure in the excluded territory".

Other State Courts have made similar holdings. We cite particularly People ex rel Mercer v. Zearing 305 Ill. 503, 137 N. E. 481 and Bray v. Payne 210 Cal. 465, 292 Pac. 478, as well as the text in Second Edition American and English Encyclopedia of Law, Volume 23, pages 628-9.

Petitioners' only means of escape from the effect of these decisions is by the claim that the last paragraph of the opinion in the Cedar Key case, (as they say in their brief) (Petitioner's brief, p. 11) *"saved the rights of individual property owners who might be able to show that their lands were never lawfully included within the city"*. Let the opinion of the Florida Court speak for itself. We quote that paragraph of the opinion:

> "If any question of territorial boundaries for the application of the taxing power commanded to be exercised on the part of the de facto municipal corporation of the City of Cedar Key should arise, it should be duly adjudicated *at the instance of such individual complainants as may be able to prove that they were at no time ever within the orbit of the respondent municipality's exercise of complete jurisdiction as an actually functioning de facto municipality claiming to be the City of Cedar Key prior to the judgment of ouster*".

If this exception had the effect of saving the right of all whose lands were not "lawfully included within the city" (the language of petitioners), none of the lands that had been added to the town of Cedar Key by the Acts of 1913 and 1923 would be subject to tax for the Circuit Court had held that none of them had been "lawfully included". The real holding of the Court was that *only lands that were at no time within the orbit of the municipality's exercise of corporate jurisdiction as an actually functioning, de facto municipality, claiming to be the City of Cedar Key, prior to the judgment of ouster* were to receive consideration. This statement is consistent with the entire context of the opinion.

The record in this case discloses that the defendants did not prove or even attempt to prove that their lands were never "within the orbit of the municipality's exercise of jurisdiction", nor that "the actually functioning de facto municipality of Miami Shores" did not claim to be a municipality, nor that it did not

> "exercise jurisdiction over the lands of the petitioner prior to the judgment of ouster"

and since. On the contrary, the Master, the District Judge and the Circuit Court of Appeals *affirmatively held* that the municipality of Miami Shores claiming to be such, actually did exercise municipal powers *over all of the territory included within its tentative boundaries up to the time of the filing of the information without objection*, and even

continued to exercise many of its functions until after the final judgment of ouster without objection other than the prosecution of the proceeding in quo warranto. The statement of Petitioner's brief that the language of the Florida Court is "just exactly what we have here" is misleading and finds no basis in the record. It is directly contrary to the evidence, to the findings of the Master and the District Judge, and to the opinion of the majority of the Court of Appeals. Even under that paragraph of the opinion of the Florida Court, Defendant's argument falls.

POINT B

Validation Decrees of State Court Are Res Adjudicata

Moreover that Petitioner's lands were within the town had been *conclusively determined by a final decree of the State Court before the bonds were issued.* The opinion of the District Judge and that of the Circuit Court of Appeals repeatedly refer to the decree validating the bonds of the town but do not place the emphasis upon them that we think they should receive. The Master found (R 370-1) that the bonds had been authorized, decrees of validation of all issues were entered by the Circuit Court and no taxpayer interposed any objections to the same nor filed any proceeding to restrain the issuance of the bonds or expenditure of the proceeds. This finding was confirmed by the District Judge (R 381).

The sole purpose of the validation statute of Florida was to secure an adjudication of the validity of bonds as an inducement to purchasers and as an assurance to them that all legal questions had been disposed of. The extent to which the Georgia Court has gone in sustaining such a decree is illustrated in Gibbs v. Ty Ty Consol. School Dist., 147 S. E. 765. The Florida statute was copied from the Georgia statute.

The Supreme Court of Mississippi in Love v. Mayor of Yazoo City, 138 So. 600 said that the

> "main purpose of Chapter 10, Code 1930 (validation Act) was to have the validation of the bonds determined in order that the bonds so validated might be readily sold in the market, to create in the mind of the bond buyer a sense of security, in that by the decree of the court and the fiat of the Legislature there could be no further attack upon the validity of the bond issue."

Neither the Constitution of Florida nor the validation act reserve, either in the Court or the Legislature, power to alter or change the rights of purchasers of bonds after validation.

Section 5, Art. VI of the Constitution of Florida limits the legislative power to alter municipal boundaries by requiring it to make provision for payment of the town's debts. This requirement would be violated by an act excluding lands representing sixty per cent of the assessed value as much so as if the entire corporation was abolished. To say that the Legislature could not exclude these lands, but that they could be excluded by the same Court that validated the bonds would make a mockery out of constitutional provisions intended to protect the rights of creditors of municipalities. As Judge Ritter pointedly held, the security of the bonds would be destroyed by whittling away the territory as much so as by an open attempt at repudiation. The Court of Appeals said that

> "the same question is presented as to the liability of territory excluded from a municipality in ouster proceedings as is presented when a municipality is ousted from jurisdiction over all its territory."

The Florida validation Statute, Chapter 6868, Acts of 1915, has been repeatedly construed. The petition for validation was directed against "the State of Florida". It was

served upon the States Attorney of the Judicial Circuit in which the proceedings were pending. He was required to

> "carefully examine the petition and to make such defense to the same as shall seem proper."

Notice was published to all taxpayers and citizens to show cause, why the bonds should not be validated; by publication of the notice all taxpayers and citizens were

> "considered as parties defendant to said proceedings, and the Court shall have jurisdiction of the same as if they were named in said petition and personally served with process."

The decree of validation is

> "forever conclusive . . . . . against the city and all taxpayers and citizens thereof; and the validity of said bonds shall never be called into question in this State". Comp. Gen. Laws 1927, Sec. 5106-09.

The bonds (R. 296) pledged "the full faith and credit of the town of Miami Shores" and that

> "provision has been made for the levy and collection each year while any of said bonds are outstanding and unpaid of sufficient taxes *on all taxable property in said Town to pay the principal and interest of this bond and the other bonds of this issue as the same become due and payable so far as such taxes may be necessary for that purpose.*"

They contracted "to levy taxes on all taxable property *with in said town*". This pledge, as well as the power of the the town to issue bonds was approved by the decree of validation in a suit to which the State of Florida and all property owners were parties. The decision of the Florida Court against the State and taxpayers was a direct inducement to the purchasers. It is res adjudicata against the State and the taxpayers. A contrary decision would violate the good faith of the State of Florida, of the town officials and of the Circuit Court of the Eleventh Judicial Circuit.

Thompson v. Frostproof, 89 Fla. 92, 103 So. 118, said that

> "the purpose of a decree validating and confirming bonds thereunder is to put in repose any question of law or fact that may be subsequently raised affecting the validity of such bonds. This being our deduction, it is a necessary corollary that in a bond validating suit any question that goes *to the power to issue* and *validity* or *regularity* of the issuance of such bonds is proper to be raised in said suit. In this view we are supported by Smith v. Mayor, etc., of City of Dublin, supra, where the Court in effect said that while a proceeding to validate a proposed issue of bonds is a judicial one, it is a prescribed method *to ascertain in advance of the issue whether the bonds when issued shall bear on their face the imprint that they have been tested and not found wanting in any particular; this imprint renders further inquiry into their validity unavailing and the property of the taxpayers must be the source of payment.*"

The decree of validation was reversed because bonds could not be voted where the streets to be paved did not exist.

Weinberger v. Board of Public Instruction, 93 Fla. 470, 112 So. 253.

> "Any matter or thing affecting the power or authority of the several political subdivisions mentioned in section 3296, Rev. Gen. Stats. 1920 to issue bonds, or the regularity or legality of their issue, including questions of both law and fact, insofar as those matters or things could be lawfully prescribed, regulated, limited, or dispensed with by the Legislation in the first instance, or subsequently cured by a validating act, may be put in repose by a decree rendered pursuant to section 3296 et seq., Rev. Gen. Stats. 1920. So, also, may constitutional rights or privileges which are designed solely for the protection of the property rights of the individual concerned, and which he may waive, or with reference to which he may estop himself, or as to which the Legislature

may lawfully limit the period of time within which they may be exercised. Such an adjudication of the several matters just referred to is forever conclusive upon the persons and political subdivisions mentioned in sections 3296 et seq., and all such persons and bodies are thereafter forever barred from again raising those questions with respect to the bonds as to which the adjudication was made. In other words, any defect or irregularity which may be waived or to which an estoppel may apply, and which does not render the proceeding a nullity and therefore void ad initio and incapable of subsequent legislative ratification or validation, may be adjudicated in the validation proceeding under the statute, and if such defects or irregularities are not raised in that proceeding they are forever and conclusively settled with respect to the bonds therein involved."

This statement of the Court is important because *it determines the line of distinction between matters which are adjudicated and those which are not.* Issue of these bonds was enjoined because they did not mature as required by express mandatory provisions of the State Constitution.

In Abell v. Boynton, 95 Fla. 984, 117 So. 507, a bill in chancery to restrain the collection of special assessments was dismissed because the bonds had been validated. Decision was predicated on Fort Myers v. State, 95 Fla. 704, 117 So. 97, a validation proceeding in which the Court held that as the assessments were void, the bonds could not be validated.

In Bay County v. State, 116 Fla. 656, 157 So. 1, and in State v. Citrus County, 116 Fla. 676, 157 So. 4, the Florida Court has held that a decree of validation should not be entered where the resolution authorizing refunding bonds attempts to pledge security which could not be legally pledged.

The Circuit Court of Appeals of the Fifth Circuit in Green v. Uniacke, 46 Fed. (2d), 916 held that the validating decree was conclusive against taxpayers even though the

legality of the drainage district could not have been raised in the validation proceeding. Referring to the Statute the Court said:

> "Under this provision such a decree, which involves no violation of a constitutional provision, is conclusive as to the validity of the bonds dealt with therein putting in repose anything affecting the authority of their maker to issue them, or the regularity or legality of the issue, having the effect of making the question of the validity of the bonds res adjudicata, and preventing further litigation as to that question."

Decisions of Florida and other courts dealing with this subject are collated in notes in 87 A.L.R. 716 and 102 A.L.R. 107.

The effect of these decisions is that a judgment of validation unreversed is conclusive as to all parties to a suit and those in privity. Barse v. Whaley, 102 Fla. 404, 135 So. 879. Parties to a suit are concluded by a judgment as to all rights or acts that have been tried and also as to all those for which an opportunity for trial was given. Hay v. Salisbury, 92 Fla. 446, 109 So. 617.

A judgment on the merits is not only conclusive as to all matters determined but also as to

> "matters which might or ought to have been settled and on all questions necessarily involved or which could have been presented."

Prall v. Prall, 58 Fla. 496, 50 So. 867, and State v. Wright, 107 Fla. 178, 145 So. 598.

In Sauls v. Freeman, 24 Fla. 209, 4 So. 525, the Florida Court held that the taxpayers of a county were concluded by a judgment against the county, not only as to every matter that was offered and received to defeat the claim but also as to every other matter that might have been received for either purpose. Even though county officials

failed to prove facts that otherwise might have been a defense the issuance of the peremptory writ was held binding on the town and on taxpayers so as to prevent them from maintaining a bill in chancery to restrain the officials from taking the action commanded by the writ of mandamus.

In Fidelity National Bank and Trust Co. v. Swope 274 U. S. 123, 71 L. Ed. 959, this Court held that a statute of Missouri authorizing the validation of paving liens authorized

> "the Court to examine and determine the validity and effect of the legislative action in establishing the benefit district. The result of the proceeding is to establish judicially as against the property owners in the district the validity of such action and of the liens established or to be established conformably to the statute on the specific property described."

That such judgment was binding upon the taxpayer even though the procedure was a modified form where the parties were reversed and the issues were raised at the behest of the city.

Weinberger v. Board of Public Instruction, supra, held that a validation decree was as effective as a statutory validation, and this Court in C. H. & N. Railway Company v. Wells, et al, 260 U. S. 8, 27 L. Ed. 100 sustained the validity of an act validating certain road district bonds although the act was passed during the pendency of the suit, on the ground that

> "What the Legislature could have authorized it can ratify, if it can authorize at the time of ratification".

The Supreme Court of Florida admitted that the Legislature could have authorized the inclusion of all of the territory within the town because such was not prohibited by the Constitution. Therefore a validation act by the Legislature

would have been constitutional and what could have been validated by the Legislature could be and was validated by the decree of the Circuit Court.

The Supreme Court of Mississippi construing its validation statute has repeatedly held that a decree of validation is res adjudicata against the state and the taxpayers as to the boundaries of school districts. See Williams v. Board of Supervisors of DeSoto County, 139 Miss. 78, 103 So. 812; Von Zondt v. Town of Braxton, 146 Miss. 461, 115 So. 557; Love v. Mayor of Yazoo City, supra. In Williams v. Board of Supervisors of De Soto County, supra, the Court held that the decree was binding on the theory of res adjudicata. That case is cited with approval in the Von Zondt case where we find the following statements:

> "The attack here on the validity of the order creating the taxing district, and of the order by which its limits were extended, is collateral, and therefore inadmissible under the cases hereinbefore cited."

and

> "The cause of action may here be, and we will assume is, different from the one in the case wherein the bonds were validated; nevertheless the judgment there rendered is res adjudicata here, for the rule is that in a second action between the same parties, or their privies, although the causes of action may be different, the judgment in the first action is res judicata in the second as to any point or question actually litigated and determined in the first."

Board of Education, Town of Carmen, Okla. v. James, 49 Fed. (2d) 91, Tenth Circuit, held that the very purpose of the validation proceeding in Oklahoma was to "furnish a readily available record, beyond which the bond buyer need not inquire," citing an earlier case, and that bondholders

> "had a right to rely on the adjudication in the funding judgment, upon the fact that the bonds were signed by the court which rendered such judgment,

upon the certificate of the Attorney General, and upon the fact that no proceedings had been brought to contest the validity of such bonds within thirty days after the date of such certificate. We conclude that the defendants are precluded by the judgment in the funding proceeding."

Our argument on this point is reinforced by the principle announced by this Court in Gelpcke v. Dubuque, 68 U. S. 175, 17 L. Ed. 520, which has been followed and applied by this and other Courts. In State ex rel Brown v. C. & L. R. R. 13 S. C. 290 the Supreme Court of South Carolina followed it where there had been a previous adjudication though it was not a bond validation proceeding, and held that the former opinion was res adjudicata of the question against the state and taxpayer. An even broader application of this doctrine was accorded it by the Supreme Court of Florida in Columbia County v. King 13 Fla. 451. In that case the Court said:

"It is also proper to observe that the case of Cotton v. the Commissioners of Leon county, was pending if not already decided by the Supreme Court, at the very moment that the earliest of the bonds of Columbia County were being issued, and they thus went forth upon the market and into the hands of third parties, not only sanctioned by the Legislature, but by the Judicial branch of the government, and thus they were treated and accepted by the world as having the very highest and strongest indorsement as to their validity, and the decision of the court in that case seems to have been acquiesced in by the people of the various counties, who were then about issuing their bonds under the same law and for the same purposes; and it does not appear that any steps were taken to enjoin the *issuing* of any of the bonds then about to be issued by the several counties, Columbia being one of them."

and again:

"Whatever, therefore, might have been the opinions of the members of this court upon the question of the constitutionality of the law referred to, the fact that the bonds were issued and passed to the

hands of third parties long years ago, that they were sanctioned by the judicial department of the government, and by the acquiescense of the people, it would be an outrage upon public justice, public credit and the rights of the holders for value of these bonds now to step in and nullify the solemn adjudication of the highest court of this State, given when these bonds were about being issued, and upon the faith of which they were sold for the means used to promote an important public enterprise, and intended to develop and enhance the prosperity and value of property of the citizens of the State."

The Gelpcke case has been repeatedly followed with approval by this Court, the last time being in Loeb v. Columbia Township 179 U. S. 472, 45 L. Ed. 280.

POINT C

Petitioners Are Estopped to Deny That Their Lands Are Within the Town of North Miami (Formerly Miami Shores)

But even if this Court should be of the opinion that the decree of validation is not of itself res adjudicata against the State and the property owners, the decree is a material fact to be considered as an additional circumstance in pais which should estop petitioners from denying that their lands are legally within the boundaries of the municipality. There can be no doubt but that property owners can be estopped and lose constitutional rights "intended for the protection of property rights". See Weinberger v. Board, supra. The opinion of the Circuit Court of Appeals and that of the District Judge describe in detail the matters in pais which in their opinion should estop these petitioners from asserting the defense here sought to be interposed. The opinion of the Supreme Court of Florida in Weinberger v. Board 93 Fla. 470, 112 So. 253, follows in language and holding a decision of this Court in Shepard v. Barron, 194 U. S. L. Ed. 1115.

"Provisions of a constitutional nature, intended for the protection of the property owner, may be waived by him, not only by an instrument in writing, upon a good consideration, signed by him, but also by a course of conduct which shows an intention to waive such provision and where it would be unjust to others to permit it to be set up."

The pleadings and the record show that the owners of property East of the Bay made no objection to the inclusion of their lands in the town or to the exercise of the town's jurisdiction over their property, or to the fact that the town obligated their lands for the payment of the bonds, until after bonds had been validated and issued. Even the State may preclude itself by estoppel from objecting to the legality of the inclusion of lands in a municipality where there has been long acquiesence and recognition. Cooley's Constitutional Limitation, Eighth Edition, pages 531-2. The Florida Court has repeatedly enforced this rule and has refused to issue writs of quo warranto, where there has been long delay and rights of third parties have accrued in reliance upon apparent acquiescence by the State and taxpayers. State v. Eau Gallie 99 Fla. 579, 126 So. 124; State v. Fort Lauderdale 102 Fla. 1019, 136 So. 889; State v. Clearwater 106 Fla. 761, 139 So. 377; State v. Coral Gables 120 Fla. 492, 163 So. 308; State v. Auburndale 121 Fla. 336, 163 So. 698; State v. Haines City 126 Fla. 561, 169 So. 383; State v. Winter Haven 125 Fla. 392, 170 So. 100; Haines City v. Haines City Heights, Inc., 126 Fla. 772, 172 So. 484; Gulfport v. State 104 Fla. 245, 140 So. 192.

Clapp v. Otoe County, 104 Fed. 473, (Text 482) said:

"There is another reason why the defense which we have been considering cannot be sustained. It is that the general acquiescence by the inhabitants of a political subdivision organized under color of law, and by the departments and officers of the state and county having official relations with it, gives to the acts and contracts of those officers on its behalf as a subdivision all the force and validity of their acts in its behalf as a subdivision de jure. The acts of ordin-

ary municipal bodies organized under color of law depend for more upon general acqiesence than upon the legality of their action for the existence of every condition precedent prescribed by the statutes under which organize and act. The interest of the public which depend upon such municipalities and their various subdivisions the rights and relation of private citizens which become fixed in reliance upon their existence, the injustice and confusion which must result from an ex post facto avoidance of their acts, commend the justice and demand the enforcement of the rule that when a municipal body or a political subdivision of a state or county has, or its officers have, assumed, under color of authority, and have exercised for a considerable period of time, with the consent of the state and its citizens, powers of a kind recognized by the organic law, neither the corporation, subdivision, nor any private party can, in private litigation, question the legality of the existence of the corporation or subdivision".

Some of the Florida cases cited do not refer to the validation decrees, but such decrees and the failure of taxpayers to object to the sale of the bonds and disposition of the proceeds are facts that should be considered in determining whether estoppel exists. This is not a question of whether the lands were legally included within the town but it is whether taxpayers are estopped to deny that they were, because of the injury that would otherwise result to innocent third parties. The opinion of Judge Ritter discusses the relative positions of taxpayers and bondholders.

POINT D

The Town at the Time the Bonds were Issued, was de facto existent over entire area.

The Court of Appeals in its majority opinion chose to treat this case from the standpoint of existence of a de facto corporation over the entire area. In this it has a precedent which has been cited with authority by numerous Federal Courts. Clapp v. Otoe County, 104 Fed. 473 opinion by Judge Sanborn, Certiorari denied 180 U. S. 638,

45 L. Ed. 710. The facts in that case very closely resemble those in the present case, as the legality of a precinct was attacked on the ground that its boundaries contravened statutes authorizing its creation. The Court said:

> "When these bonds were issued and sold, every citizen of the territory comprised within the order of October 4, 1886, and called 'Nebraska City Precinct,' *and every piece of property* therein, was represented by the board of county commissioners of Otoe county in all the proceedings which culminated in the issue of these bonds. That board was the agent of these citizens and this property, under the statutes, to borrow the money which they voted to obtain upon the bonds. Under the color of law, it constituted the precinct, called the election, issued the bonds, and no man objected. Under these circumstances, Nebraska City precinct was a precinct de facto, and the board of county commissioners were its governing officers de facto, and the silence and general acquiescence of the private citizens within it and the officers of the state and county, until after the rights of the bondholders had vested, estop them from questioning the existence of the precinct, or the validity of the acts of these officers, as against the purchasers of the bonds. The acts of these officers have all the force of the acts of officers de jure for a precinct legally constituted, and the owners of the property within the boundaries of the order of the board of county commissioners of October 4, 1886, are estopped, by their silence and acquiescence, from *denying that the property within those limits is liable to taxation to raise the necessary amount to pay these bonds.*"

Petitioners claim that in Florida a municipal corporation de facto could not exist. The argument assumes that there was no valid law, yet Petitioners admit that the statutes authorizing incorporation of the town are valid and their attack upon the boundaries is based solely on the application of the statute to the circumstances as they existed. The Florida Supreme Court in West v. Lake Placid, 97 Fla. 127, 124 So. 361, held that the Town of Lake Placid was "at least a municipality de facto" because the duties of local government had been assumed and active use of the fran-

chise had been made with the acquiescence of the inhabitants. Yet in its later decisions dealing with the charter of this town (118 Fla. 874 158 So. 497 and 121 Fla. 683, 164 So. 531), it held that the statute of incorporation was absolutely void. Other cases recognizing the de facto existence of an attempted incorporation are State v. Walthal. 124 Fla. 866, 169 So. 552 and Webb v. Hillsborough County, 175 So. 874.

We refer again to State v. Cedar Key, supra, where the opinion expressly recognizes that the City of Cedar Key was de facto although the Circuit Court had held that the charter acts were absolutely null and void. We cite also Comanche County v. Lewis 133 U. S. 198, 33 L. Ed. 604. In that case stress was laid on the fact that the Legislature had subsequently recognized the existence of the county. The Florida Legislature has also recognized the existence of the town of Miami Shores by enacting Chapter 13103 of the Acts of 1927 changing its name to North Miami, making the act dependent upon a referendum. In 1929 it enacted Chapter 14237 which validated the sale of the bonds dated January 1st, 1927 and also validated the expenditure of the proceeds derived from the sale of the bonds. It gave authority to the town to spend the balance of the proceeds for any valid municipal purpose. This act also was subject to a referendum. At the 1931 session it enacted Chapters 15347 and 15822, which authorized the town to compromise special assessments and all taxes which were delinquent prior to 1931 and Chap. 15823. No distinction was made between property East of the Bay and property West of the Bay. The same Legislature also enacted Chapter 15688 which abolished the town; subject to a referendum vote. Section 2 of that act specifically recited that the town had issued bonds and, in accordance with the provisions of the Florida Constitution, authorized and required the County Commissioners of Dade County to levy and collect taxes on property which was within the town for the payment of such bonds and even authorized the Commissioners to issue refunding bonds.

No limitation was placed upon the power of the County Commissioners to levy taxes on lands East of the Bay Biscayne.

The acts of 1929 are particularly important also because they were passed before quo warranto proceedings were instituted in July, 1929. These acts, recognizing the existence of the town, validating the bonds, and the expenditure of the money, authorizing the compromise of the taxes, providing for payments of its debts and the levy of taxes for that purpose, especially where they were subject to a referendum of all voters, constituted recognition by the Legislature of the existence of the town, and, as held in the Lewis case, supra, made a de jure corporation out of what had been before a "de facto corporation," even if the town were not de jure in its origin. The opinion of the majority of the Court of Appeals, analyzing the evidence and the decision of the Florida Court in the Mahood case to show that a town including lands on both sides of a bay could be incorporated under the act, leaves nothing that can be added.

If the right of taxpayers to be excluded from municipalities can be lost by their laches, neglect or acquiescence as against the town itself even though they be relators in an action brought by the attorney general, there is all the more reason why their rights under similar circumstances can be and should be regarded as lost as against bona fide holders of bonds.

The finding of fact by the Chancellor, affirmed by the majority opinion of the Court of Appeals that plaintiffs have estopped themselves by their actions and are precluded from raising the question of the legality of inclusion of their lands within the limits of the town against actions of bondholders should be conclusive on this subject.

POINT E

Dissenting Opinion Is Based Upon Erroneous Assumptions of Fact and Law

Before concluding we desire to discuss briefly the dissenting opinion of Judge Sibley. The primary error found in his opinion is the assumption that the

> "buyer (bond) may not have investigated the boundaries at all, or they may have known, as indeed they were bound to know, that the Florida law did not allow non-contiguous lands to be taken into a self-incorporated town,"

and

> "that the bond buying public should have known that there was no authority in law for including the land on the East side of the Bay."

The assumption that the bond buying public or the bond buyers should have *known the facts* is materially different from the assumption that they should have *known the law.* This Court in Comanche County v. Lewis, supra, said:

> "It is true that the present inhabitants have been wronged by the fraudulent acts of these conspirators in 1873-74, and it is a hardship for them to be bound for debts they did not contract and from which they received no benefit; but, on the other hand, it would be an equal hardship to the plaintiff to lose the money he has invested in the securities placed on the market, whose validity was attested to the fullest extent by both the executive and legislative departments of the State. When both of those departments give notice to the world that a county within the territorial limits of the State has been duly organized and exists with full power of contracting, can it be that a purchaser cannot in open market safely purchase the securities of that county? Does the duty rest on him to traverse the limits of the county and make personal inspection of the number of inhabitants? If any wrong has been done to the County

> through the want of attention on the part of the state authorities, equity would suggest that the State should bear the burden, and not cast it upon an innocent party residing far from the state and acting in reliance upon what it has done."

Judge Sibley's assumption is, therefore, directly opposed to the assumption of this Court.

Judge Sibley's statement of the law of Florida is also in error. The law did not and does not prohibit *noncontiguous lands* to be taken into a self-incorporated town *except when such lands were not a part of the community, village or hamlet* which was seeking to incorporate.

The result of Judge Sibley's assumption would be that the bondholders are presumed to have known not only that Bay Biscayne divided the town into two parts, but that the community, village or hamlet seeking incorporation was not located *on both sides of the Bay*. As the opinion of Judge Hutchinson points out, the Supreme Court of Florida did not hold that if the community had existed on both sides of the Bay the entire area could not have been legally incorporated. This Court asked

> "Does the duty rest on him (the bondholder) to traverse the limits of the town and make personal inspection of the inhabitants?"

Unless this question is answered in the affirmative, prospective bondholders can not be charged with notice or knowledge of the invalidity of the inclusion of any particular land. But in the face of acquiescence by property owners for a period of years and decrees by the judicial department of the State of Florida validating the bonds and a legislative validation of one issue and recognition of the town's existence by the legislature referring to the electors the question of whether certain acts should be operative, prospective purchasers of the bonds had every reason for presuming that no such question existed. Judge Ritter's opinion followed this reasoning and held that as between the

bondholders and the property owners the latter should suffer because of their participation and acquiescence in the pledges made by the town.

Judge Sibley also erred in the assumption that

> "the Supreme Court of Florida many years before (the issue of the bonds) had construed the statute and held that it did not authorize the inclusion of any but lands contiguous to the village or hamlet,"

citing Town of Enterprise v. State 29 Fla. 128, 10 So. 740. The error in this assumption is two-fold. First, because the lands East of the Bay Biscayne were not *noncontiguous*. They were only separted by a body of water and Section 2935 C. G. L. 1927 of the statutes of Florida expressly gave to the town jurisdiction over such waters.

This section was formerly Section 4 of Chap. 1855, Acts of 1871 and was an amendment to Chapter 1688, Acts of 1869 which was the general law under which the town was incorporated.

But the Enterprise decision did not rest upon the fact that the lands were "noncontiguous." The opinion shows that attempt was made to include a tract on mile square with a tract four miles square which was located five miles distant. The Court repeatedly referred to these tracts as being "detached." It said that the act was "an attempt to incorporate *two distinct detached tracts of land*," that "the idea of a municipal government, with *outlying detached municipal provinces*" was not justified; that the incorporation was void because it attempted to include "two distinct and detached tracts of land", and that it sought to incorporate "*two detached territories under one government*". The prime reason for the decision is found in the statement that this *could not be done because "the machinery of government provided by the* statute is inapplicable to such a state of affairs." A town could not under the statute function over two *detached* tracts. It could not even condemn a right-of-way from one tract to the other. No such difficulty is found in this case where only a body of water intervenes.

It is a well known fact that in Florida and elsewhere many towns and cities incorporated by special act and under general laws include waters navigable and otherwise within their limits. The Florida Supreme Court admitted that there was no constitutional bar to the existence of such a town as the majority opinion of the Court of Appeals clearly points out.

Nor is the Enterprise decision authority for the power of a state court to detach or exclude a part of the area of a town. On the contrary the Court expressly held that the *entire act of incorporation was void.* Even the Petitioners admit that a town does exist de jure, and the record is conclusive that the town did exist de facto over the entire area, and the validation decree necessarily held that it existed de jure. The Court could not have validated bonds unless there was a de jure authority to issue them. As it has so held, that decree could not be questioned. The decree of validation is res adjudicata that the town legally existed and had the power to issue bonds. The Court could not, thereafter hold to the contrary in an action by bondholders who purchased in reliance upon such adjudication. The Cedar Key decision so holds.

We also call to the attention of the Court the fact that no bonds had been issued by the town of Enterprise, no bondholders were parties and the case could not even have adjudicated the effect of a decree of ouster upon the rights of bondholders.

The suggestion of Judge Sibley that the liability of the two areas should be adjusted on an equitable basis cannot be justified in the light of Chapter 14237, Acts of 1929 which validated the sale of the bonds, the expenditures which had been made and authorized further expenditures of the proceeds for such municipal purposes as the officials should determine.

CONCLUSION

In conclusion we submit that the prime equity of this bill is found in the fact that the Petitioners seek to give to the decree of the State Court an effect which would, under the admitted allegations of the bill destroy the value of the securities issued. In Payne v. First National Bank, supra, the Texas Court said that

> "such an interpretation (permitting judgment of ouster to impair the obligations of contracts) would render its provisions (of the State Constitution and all statutes governing jurisdiction in quo warranto) obnoxious to the clause of the Federal Constitution inhibiting the passage of laws having that effect;"

that it limited the legal effect of a quo warranto judgment, where no provision was made for the payment of existing indebtedness, to deprive the officers of all powers *"except such as were necessary for the protection of creditors."* This is the holding of the Florida Court. State v. Cedar Key, supra.

The power of Federal Courts to protect non-residents against the effect of decisions by State Courts in cases to which they were not parties and which would defeat and destroy their rights was asserted in Fetzer v. Johnson 15 Fed. (2nd) 145 (certiorari denied by this Court 273 U. S. 751, 71 L. Ed. 873) where the Eighth Circuit Court of Appeals enjoined a judgment of the Supreme Court of Oklahoma holding a drainage district void. The decision of the Circuit Court was based upon the principle announced in Wells Fargo v. Taylor 254 U. S. 175, 65 L. Ed. 205, that

> "a Federal Court of equity will by its writ of injunction, deprive one of the benefit of a judgment obtained in a State Court in circumstances where its enforcement will be contrary to recognized principles of equity and the standards of good conscience."

That the judgment and decree of the State Court if given the effect urged by Petitioner would violate these principles cannot be denied. The mere fact that a decree of the

Federal Court will produce a conflict with decrees of the State Courts is not in itself sufficient to prevent this Court from granting the relief to which Complainants are otherwise entitled, though we admit that such conflicts are to be avoided where possible.

We submit, therefore, that under the first phase of the case, the peremptory writ should be enforced and action by the town officers taken pursuant thereto should be protected against outside interference even under decrees of the State Court; that under the second phase of the bill the bondholders are entitled to protect the contracts made by the town with them with at least the implied consent and acquiescence of the Petitioners, and which were validated by the State Court and recognized by the State Legislature. Whether we regard the rights of the bondholders as having been finally adjudicated by the validation decrees or whether the property owners East of the Bay be held estopped from asserting their rights by reason of the facts and circumstances which have been proved, or whether we regard the town prior to the judgment of ouster as existing de facto throughout the entire corporate limits as defined by the act of organization, we reach the same result. Contracts made by the town under its apparent and assumed authority, which were not questioned until after the rights of innocent third parties had accrued, should be enforced according to their terms wherever such enforcement is necessary to the protection of the creditors. Or, to state it in a negative way, property owners whose lands may have been illegally included should not, under the facts of this case, be permitted to assert such illegality as against the claims of creditors acquired in good faith unless it is affirmatively made to appear that liability of such lands is not necessary for the protection of the creditors' rights. The effort of Petitioners is to accomplish by indirection results which the Constitution of the United States and the Constitution of Florida prohibit, namely, the destruction of vested interests and contract rights. Admittedly this could not have been done

by the Legislature or under its authority after such rights have accrued, because of Section 10, Article I of the Constitution of the United States, and Section 17 of the Declaration of Rights of the Constitution of Florida. We submit that such cannot be accomplished indirectly by the use of the State writ of quo warranto to which creditors were not a party, where the contracts were made in good faith before such action was instituted, in reliance upon the state of affairs existing within the town; where the bonds contained pledges by the officials, had been validated by the Courts of Florida and the existence of the obligations has been recognized by town and the Legislature.

We assert that the judgment of ouster operates only prospectively and does not affect the rights of such creditors; that this case must be decided upon the facts and circumstances disclosed, and is not controlled or even influenced by decisions of the Florida Court relating to Miami Shores to which no bondholder was a party and which were not made until long after rights had become fixed.

Respectfully submitted,
GILES J. PATTERSON,

Solicitor for Respondents
The Brown Crummer Investment
Company, Town of North Miami,
Et Al.

Supreme Court of the United States

October Term, 1937.

No. 10

OCEAN BEACH HEIGHTS, INC., NORMANDY BEACH DEVELOPMENT COMPANY, ET AL.,

Petitioners,

Versus

THE BROWN CRUMMER INVESTMENT COMPANY, TOWN OF NORTH MIAMI, ET AL.,

Respondents.

PETITION OF THE BROWN CRUMMER INVESTMENT CO. FOR A REHEARING.

GILES J. PATT

Supreme Court of the United States
October Term, 1937
No. 10

OCEAN BEACH HEIGHTS, INC., NORMANDY BEACH DEVELOPMENT COMPANY, ET AL.,

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THE BROWN CRUMMER INVESTMENT COMPANY, TOWN OF NORTH MIAMI, ET AL.,

Respondents.

———:———

PETITION FOR REHEARING.

———:———

Comes now the above-named Respondents, The Brown Crummer Investment Company, and presents this, its petition for a rehearing of the above entitled cause, and, in support thereof, respectfully shows:

I.

The opinion of this Court clearly indicates an intention to decide this case in accordance with what it conceived to be the local law of Florida in force at the time

the bonds were issued in 1926 and 1927 and the law of Florida as it has been interpreted in Mahood v. State ex rel Davis, 101 Fla. 1254, 133 So. 90, and Leatherman v. Alta Cliff, 114 Fla. 305, 153 So. 845, decided since the bonds were issued. These later decisions are in direct conflict with the earlier decision of the Florida Court in Town of Enterprise v. State, 29 Fla. 128, 10 So. 740, and are not consistent with it as this Court assumed. Because:

A. In Enterprise v. State 29 Fla. 128, 10 So. 740, the Florida Supreme Court held that,

> "an attempt to incorporate two distinct detached tracts of land, as corporate territory under one government, *is unauthorized and void,*"

and that,

> "there was *no municipal government in existence* or operation."

If, as this Court now holds, the two tracts of land separated by the bay were "detached tracts" within the meaning of the statute, Enterprise v. State would have necessitated the further conclusion that the attempted incorporation was "unauthorized and void" and "no municipal government came into existence or operation." Since the rendition of the opinion in this cause, the District Judge for the Southern District of Florida has so held with reference to this particular town as shown by its opinion and order in United States of America, ex rel F. M. Horigan v. Town of North Miami, hereto attached and made a part of this petition and marked "Appendix". An appeal from that judgment has been taken to the Circuit Court of Appeals for the Fifth Circuit.

B. But, in Mahood et al v. State ex rel Davis, supra, and in Leatherman v. Alta Cliff, supra, long after the bondholders' rights had attached, the Court excluded one of two detached tracts (assuming they were "detached") without holding the entire municipality void. This ruling was

an innovation upon the law of Florida. For, as held in Enterprise v. State, incorporation under such circumstances was void, the municipality never came into existence and both tracts were similarly affected.

C. But all Courts are precluded from holding as against petitioner that the corporation of Miami Shores did not legally exist; by the validation decree, which, by statute is made "forever conclusive . . . . against the city and all taxpayers and citizens thereof; and the validity of said bonds shall never be called into question in any court in this state", Compiled General Laws of Florida, 1927, Sections 5106 through 5109; and by the judgment obtained in the Federal Court by the plaintiffs (respondents) (R-283) based upon the declaration (R-286) which alleged that

> "said town of Miami Shores is now and was at the time hereinafter mentioned a municipal corporation acting under and by virtue of the laws of the State of Florida".

This judgment under Sauls v. Freeman 24 Fla. 209, 4 So. 525, is conclusive against all taxpayers and citizens as to the existence of the town. Both judgments are conclusive in this cause of the legal existence of the corporation as a whole at the time the bonds were issued. The fact that the Supreme Court of Florida has ordered the exclusion of one of the tracts since the bonds were issued should not affect the rights of petitioner which was not party to these causes. Both tracts should have been excluded, if the Enterprise case controls, or neither tract, if the validation decree and plaintiffs' judgment obtained in the Federal District Court are given their legal effect.

D. The opinion of the Court also fails to take into consideration the fact that the legal existence of the town has been repeatedly recognized by the Legislature of Florida, which both before and after bonds were issued, enacted statutes relating thereto; Chapter 13103 of the Acts of 1927

changing the name, Chapter 14237 of the Acts of 1929 validating the sale of one issue of bonds (some of which are included in the judgment), Chapter 15347 and Chapter 15822 of the Acts of 1931 authorizing the town to compromise delinquent taxes and assessments and Chapter 15688 which abolished the town subject to the results of a referendum vote. Two of these statutes were enacted before quo warranto proceedings were instituted. Under numerous decisions of this Court, this constituted legislative recognition.. Even the Supreme Court of Florida in Mahood v. State, supra, recognized the power of the Legislature to validate the organization of the town when it said that it "was not prepared to say that the Legislature could not by proper enactment create a municipality embracing an area a part on one side and a part on the other side of a bay of this character." None of these legislative acts made any distinction between the east side tract and the west side tract, but impliedly recognized the validity of the corporation as a whole which would have been void under Enterprise v. State, supra.

E. The opinion of this Court assumes that the two tracts of land separated by the bay "were detached tracts within the meaning of the statute." But, in so doing it apparently overlooked Section 2943, Compiled General Laws of 1927 which gave towns organized under the statute authority "over the waters of all rivers, creeks, harbors or bays contained within the corporate limits." This Section has been *a part and parcel* of the general municipal self incorporation statute of Florida since it was added thereto by Chapter 1855 of the Acts of 1871. The Florida Court had never dealt with this section prior to the issuance of the bonds of respondent. The case of Enterprise v. State, supra, dealt with two tracts of land separated by five miles of intervening land. All textbook writers and the supreme courts of other states which had construed similar statutes of self incorporation had affirmatively held that the existence of an intervening navigable river

or bay did not prohibit a city or town organized under a self incorporation act from either including or annexing territory across the water of said river or bay. See general statement to this effect in 19 R. C. L. Paragraph 40, p. 734 McQuillan Municipal Corporations, 2nd Ed. Section 294, and the cases cited, including Blanchard v. Bissell, 11 Ohio State Reports 96; Ford v. North Des Moines, 80 Iowa 626, 45 N. W. 1031; Vogel v. Little Rock 59 Ark. 335, 15 S. W. 836; Vestal v. Little Rock 54 Ark. 321, 15 S. W. 891; and Houghton County v. Blacker, 92 Mich. 638, 52 N. W. 951. Such unanimous construction of similar statutes, with the statement of the Supreme Court of Florida in Lane v. State, 63 Fla. 220, 57 So. 662, *decided in* 1912 after the decision in Enterprise v. State and before the bonds were issued, that under Section 8, Article 8 of the Constitution,

> "it is within the power of the Legislature by valid enactments to prescribe the territorial limits of a municipality as it deems proper when no provision or principal of organic law is violated. Even if the description of the territory in the special act establishing the town of Auburndale, when properly construed, would cover noncontiguous lands, the Constitution is not thereby violated."

justified this petitioner as purchaser of the town's bonds, especially after the decree of validation, in assuming that the tracts were "contiguous" and not "detached".

II

The holding of this Court that the east side lands could not be brought within the taxing power of the town

> "by the owners' acquiescence in its attempted exertion of jurisdiction over them * * *. The consent of owners of lands located beyond permissible limits of the municipality cannot be made to serve as a statutory grant of power."

insofar as to make lands liable for taxes necessary to be levied for the payment of debts is contrary to the decision of the Supreme Court of Florida in State v. Lake Placid, 121 Fla. 839, 164 So. 531, where the Court in referring to the special act which fixed the boundaries of Lake Placid said:

> "The act was a legislative act; not the act of people living within a village, hamlet, or town, who, under the general law, sections 2935, 2936, 2937, 2938 et seq., Comp. Gen. Laws of 1927, desired to establish for themselves a municipal government. See Town of Enterprise v. State, 29 Fla. 128, 10 So. 740; Leatherman v. Alta Cliff Co., 114 Fla. 305, 153 So. 845. See, also, State v. Town of Forest Park, 87 Fla. 477, 100 So. 735.
>
> "If such had been the case, the averments in the answer may have presented a question of estoppel against the corelators who complain of the inclusion of their lands within the territorial boundaries of the town."

This statement recognizes that though estoppel does not serve as a grant of power, it can preclude property owners from escaping liability for the payment of taxes levied for debts in towns organized under the *general law of incorporation.*

III

The opinion of this Court on the authority of Duke v. Taylor, 37 Fla. 64, 19 So. 172, holds there can be no municipality de facto in the absence of a law authorizing the creation of a municipality de jure. Petitioners admit that there was a law authorizing *self incorporation of municipalities* which law has been repeatedly recognized by the Supreme Court of Florida as a valid one. Duke v. Taylor relates only to the organization of *private* corporations. The law of Florida relating to the creation of

de facto public or municipal corporations is stated in West v. Lake Placid, 97 Fla. 127, 120 So. 361,

> "Where an attempted incorporation of a municipality is an absolute nullity, such incorporation may be collaterally attacked. In this instance, however, acting under at least color of authority from the Legislature found in the passage of Chapter 12990, supra, this municipality apparently in good faith has taken the necessary steps to put its charter into operation, has elected its officers, has assumed the duties of local government under its charter, and has otherwise engaged in an active user of the franchise — all of which has been acquiesced in by the inhabitants of the municipality until the institution of this proceeding. Thus the municipality has become at least a municipality de facto."

The statute incorporating that town was held to be void under the Florida Constitution in State v. Lake Placid 117 Fla. 874, 158 So. 497; and 121 Fla. 839, 164 So. 531. But Henderson v. Lake Placid (decided January 8, 1938) recognized the validity of the taxes levied by that town for debt service despite the fact that there was no legal statute authorizing incorporation of the town.

IV

The opinion of this Court distinguishing the decision in Clapp v. Otoe County, 104 Fed. 473, apparently overlooked the fact that the invalidity of the precinct organization which issued the bonds there involved, was, as is the assumed invalidity of the town in this case, due merely to the fact that the boundary lines were fixed in a manner not authorized by the statute. The Court of Appeals in the Clapp case held that the precinct was a de facto corporation and that all property within the void boundaries was liable for taxes to pay the debts although the statute did not authorize the creation of a de jure precinct with such boundaries. The decision in that case is therefore a direct precedent for our position.

V

A dismissal of the bill of complaint by the District Judge as ordered by the opinion will not dispose of the conflict between the injunction of the State Court and the order contained in the peremptory writ of mandamus issued by the United States District Court commanding the levy of taxes against both tracts for the payment of plaintiff's judgment. But will leave the plaintiff and the city officials in the position which they occupied prior to the filing of the bill.

V I

This case is of vital importance to all municipalities of Florida and to the holders of their bonds. The condition of municipal credit in Florida is deplorable. While the Court apparently intended to limit the effect of its decision to towns organized under the general law of self incorporation, the statement in the opinion that purchasers of bonds could by inspection of the statute and the boundaries, have ascertained that the territory included was in excess of statutory limitations, will necessarily effect creditors of every municipality in Florida. Because the Supreme Court of Florida has in other decisions, such as State v. Stuart, 97 Fla. 69, 120 So. 335; State ex rel Davis v. Largo, 110 Fla. 21, 149 So. 420; Town of Boynton v. State, 103 Fla. 1113, 138 So. 639; State v. City of Homestead, 100 Fla. 354, 130 So. 29, and others, held that in quo warranto proceedings it can exclude from municipalities whose boundaries are fixed by special legislative enactment, lands not benefited. The opinions of the Supreme Court of Florida are replete with instances where property has been excluded from municipalities whose boundaries were fixed by special legislative act because they were not benefited, and where it can be said with equal force that purchasers of bonds should have determined such fact by a mere "inspection of the statute and the boundaries."

VII

The Court in attempting to differentiate this case from "those dealing with good faith attempts to organize municipalities under unconstitutional enactments presumed valid until adjudged repugnant to fundamental law" apparently overlooked the fact disclosed in this record that this was a good faith attempt by the taxpayers and inhabitants of both sides of the bay to organize a municipality under a statute presumed sufficient to authorize the inclusion of lands and navigable waters lying between and not adjudged insufficient until after the bonds were issued. Constitutionality of a statute which would authorize such is admitted by the Supreme Court of Florida in Mahood v. State, supra, and Lane v. State, supra, where in the latter case it was said:

> "Even if the description of the territory in the special act establishing the town of Auburndale, when properly construed, would cover noncontiguous lands, the Constitution is not thereby violated."

VIII

At the time the bonds owned by the Brown Crummer Investment Company were purchased from the town there was not only nothing in the statutes of Florida or the decisions of that state to indicate that any lands were improperly included within the boundaries of the town, but, the statute itself impliedly recognized the power and the decisions of other states confirmed such assumption. The decision of the Supreme Court of Florida in Lane v. State impliedly affirmed it, and the actions and conduct of the taxpayers and inhabitants of both tracts of land all conduced to cause said Company to believe that there was no legal defect in the organization of the town or ground upon which the major portion of the property subject to taxation could escape liability therefrom.

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that the decree of the Supreme Court be, upon further consideration, reversed.

Respectfully submitted,

GILES J. PATTERSON,

Solicitor for Respondents.

CERTIFICATE OF COUNSEL

I, Giles J. Patterson, counsel for the above-named Respondents, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

GILES J. PATTERSON,

Solicitor for Respondents.

APPENDIX

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA,

MIAMI DIVISION No. 2380-M-Civ.

UNITED STATES OF AMERICA, ex rel., F. M. HORIGAN, a citizen and resident of the State of Wisconsin,

Relator,

v.

WALTER S. HEYWARD, as Mayor, E. C. HARNER, GEORGE S. BULLARD, M. V. EDLIN, J. C. FLANDERS, and H. V. FORTUNE, as and constituting the Town Council, and E. C. HARNER, as President of the Town Council, and E. MAY AVIL, as Treasurer and Town Clerk of NORTH MIAMI, a municipal corporation existing under the laws of the State of Florida, in Dade County, Florida,

Respondents.

ORDER

This cause coming on to be heard on the motion of relator for leave to amend the petition for alternative writ

of mandamus and the alternative writ of mandamus herein and there being no objections thereto,

It is ordered that said motion be and the same is hereby granted and said alternative writ of mandamus is hereby amended instanter by inserting therein the words and figures "January 5, 1938" in lieu and instead of "January 5, 1937"; and said petition for alternative writ of mandamus and said writ are hereby amended instanter by substituting the names of J. V. Shellhorse and Frank Dale as respondents in the place of George S. Bullard and M. V. Edlin.

And the cause coming on to be heard on the motion of respondents to quash said alternative writ of mandamus as amended and the same having been argued by counsel for the respective parties and the court being duly advised in the premises and it appearing that the Supreme Court of the United States did, on the 18th day of January, 1938, hand down its opinion in that certain case of Ocean Beach Heights, Inc., Normandy Beach Development Company, et al., petitioners v. The Brown Crummer Investment Company, Town of North Miami, et al., on writ of certiorari to the United States Court of Appeals for the Fifth Circuit, which was a case appealed from this court and which involved records and principles of law pertaining to the case now before this court; and it appearing that the Supreme Court of the United States stated that the Florida statutes which:

> "empower the male inhabitants of any hamlet, village or town 'to establish for themselves a municipal government,' . . . require notice specifying time and place of meeting and the proposed corporate limits, sec. 2937, . . . direct that 'the qualified electors present, being not less than two-thirds of those whom it is proposed to incorporate and not less than twenty-five in number, shall select a corporate name . . . for the municipality . . . and designate BY DEFINITE METES AND BOUNDS THE TERRITORIAL LIMITS' sec. 2938";

and in construing this and other related statutes, the court cited the case of the Town of Enterprise v. State, 29 Fla. 128, 10 So. 740, and stated that:

> "the state supreme court held that the statute did not permit incorporation of disconnected tracts of land, found a part of the territory proposed to be incorporated to be disconnected from the other part, and declared (p. 145): 'An attempt to incorporate two distinct detached tracts of land, as corporate territory under one government, is unauthorized and void' ";

and then the court stated that a:

> "mere inspection of the statute and the defined boundaries unmistakably shows . . . these were detached tracts within the meaning of the statute";

and then it stated:

> "the state supreme court of Florida having held that an attempted incorporation of detached areas was unauthorized and void and there existed no color of authority for the inclusion of the east side",
> (See Mahood et al. v. State ex rel. Davis, Attorney General, et al., 101 Fla. 1254, 133 So. 90, and Leatherman v. Alta Cliff Co., et al., 114 Fla. 305, 153 So. 845)

that is the land lying on the east side of the bay which was a part of the original territory constituting the alleged Town of North Miami; and it appearing that the Supreme Court of the United States, upon these findings of law and fact, held that:

> "In the absence of a law authorizing creation of a new municipality de jure there can be none defacto".

So, based upon these decisions and the records therein, the Court is of the opinion and so holds, that the attempt to incorporate the two distinct detached tracts of land as corporate territory under one government to be called the Town of North Miami was unauthorized and void.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the motion to quash the alternative writ of mandamus be and the same is hereby granted and the petition for the alternative writ be and the same is hereby dismissed.

DONE and ORDERED at Miami, Florida, this the 29th day of January, 1938.

(s) A. V. LONG,
U. S. Judge.

SUPREME COURT OF THE UNITED STATES.

No. 10.—October Term, 1937.

Ocean Beach Heights, Inc., Normandy Beach Development Company, et al., Petitioners,
vs.
The Brown-Crummer Investment Company, Town of North Miami, et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[January 17, 1938.]

Mr. Justice Butler delivered the opinion of the Court.

The question is whether for the payment of its outstanding bonds the respondent town may tax petitioners' lands which, without statutory authority, were included by boundaries defined in proceedings for its incorporation. Petitioners' contention is that the lands never were within the boundaries of the towns *de jure* or *de facto* and that therefore they are not subject to its taxing power.

The Florida statutes empower the male inhabitants of any hamlet, village or town "to establish for themselves a municipal government," (Compiled General Laws, 1927, § 2935) to be designated an incorporated town if it contains less than 300 registered voters, § 2936. They require notice specifying time and place of meeting and the proposed corporate limits, § 2937, and direct that "the qualified electors present, being not less than two-thirds of those whom it is proposed to incorporate and not less than twenty-five in number, shall select a corporate name . . . for the municipality . . . and designate by definite metes and bounds the territorial limits," § 2938.

In 1892, in *Town of Enterprise* v. *State*, 29 Fla. 128, the state supreme court held that the statute did not permit incorporation of disconnected tracts of land, found a part of the territory proposed to be incorporated to be disconnected from the other part, and declared (p. 145): "An attempt to incorporate two distinct detached tracts of land, as corporate territory under one government, is unauthorized and void. . . ."

In 1926, electors residing in Dade County, Florida, on the west side of Biscayne Bay, incorporated a town, Miami Shores now called North Miami. The boundaries specified by the incorporators included approximately 16 square miles, 14 of which were on the west side of the bay and had a population of 2500. Two square miles were on the east side and had but 12 inhabitants. Though nearly vacant, these lands were much more valuable than all the property on the west side. The water separating the two areas is about a half mile wide. At the time of incorporation, construction of a causeway had been commenced, but its beginnings having been destroyed by hurricane later in that year, it has not been built. By land the distance between the settlement on the west side and the east side area is about ten miles, and to go by land from one to the other it is necessary to pass through another municipality. Petitioners own lands on the east side.

Between January 1, 1927 and April 1, 1928, the town issued bonds, $238,000 of which are outstanding. In each bond the town pledged its faith and credit for payment and declared that provision had been made for the levy and collection, each year that the bond remained outstanding and unpaid, of sufficient taxes on all taxable property within its limits to pay principal and interest as they came due. But none of the bonds contained any statement indicating the boundaries of the town or in any manner representing that any part of the area on the east side of the bay was within its limits. The bonds were validated by decrees of the circuit court for Dade County, §§ 5106-5109, Compiled General Laws, 1927. No owner of east side land was party to the validation suits and no question as to whether the town included any part of the lands east of the bay was there involved. Proceeds of the bonds were used for the construction of permanent improvements; the only part spent on the east side was $6,000 for mosquito eradication, most of which went for equipment which the town still owns.

In a *quo warranto* suit brought by the State on the relation of its attorney general in August, 1929, and in a later suit brought by owners of east side lands to cancel tax certificates on their lands, the state supreme court held that the statute relied on for creation of the municipality did not authorize inclusion of non-contiguous areas. *Mahood* v. *State*, 101 Fla. 1254. *Leatherman* v. *Alta Clif Co.*, 114 Fla. 305. And in those suits it was finally adjudged that

the east side was not and never had been a part of the incorporated town, and that the town never acquired jurisdiction *de jure* or *de facto* over the land east of the bay. A decree of ouster as to the east side land was entered in December, 1931, and tax certificates on lands on that side were canceled. No bondholder was a party to either of these suits.

Prior to the *quo warranto* suit, the jurisdiction of the town over the east side was not challenged by the State, property owners or others. And until prevented by the decree of ouster, the town exerted municipal authority on both sides of the bay within the boundaries defined by west side electors acting to incorporate the town. It laid taxes on east side lands, some of which were paid by petitioners.

In 1930 respondent sued the town in the United States District Court for Southern Florida and got judgment on nine of the bonds. There was involved no question as to whether the east side lands ever were within the town or liable to be taxed to pay the bonds. In 1931 respondent brought in the same court a mandamus suit to compel the town and its officers to levy taxes on all the lands within the boundaries defined by the incorporators. Owners of land on the east side including petitioners were permitted to intervene. They maintained that the town had no jurisdiction over their lands or authority to tax them. The court entered a decree commanding the town and its officers to tax all the property within the town limits as originally defined. The town and its officers did not object to the decree nor appeal from it. The intervening east side owners attempted to have it reviewed in the Circuit Court of Appeals. The court held that, as the judgment was not against them, they had no standing to question it and dismissed their appeal. 69 F. (2d) 105.

Then respondent brought this suit for itself and other bondholders against the town, its officers, the clerk of the circuit court of Dade County, and east side land owners, including the petitioners. It alleged that the town was unable to pay the bonds unless permitted to levy and collect taxes on east side property; that the town and its officers were ready and willing so to do, but were prevented by the decrees in the *Mahood* and *Leatherman* cases, and that the clerk of the circuit court was bound by the decree in the latter case. It prayed an injunction to restrain petitioners from

interfering, by use of the ouster decree or otherwise, with the levy or collection of taxes on east side lands for the payment of respondent's judgment and the outstanding bonds and to restrain the town and the clerk of the court from refusing to levy or to take steps required for collection of such taxes. The town and its officers answered and in effect joined in the prayer of the bill. Petitioners moved to dismiss, the court denied their motion; two of them answered. The parties introduced their evidence, the court found the facts and entered its decree substantially as prayed. Petitioners alone appealed. The Circuit Court of Appeals affirmed on the ground that the town *de facto* included the east side lands. 87 F. (2d) 978.

That view cannot be sustained. This case differs essentially from those dealing with good faith attempts to organize municipalities under unconstitutional enactments presumed valid until adjudged repugnant to fundamental law. See, e. g., *Clapp* v. *Otoe County*, 104 Fed. 473, 482. *Speer* v. *Board of County Com'rs*, 88 Fed. 749, 765. *Ashley* v. *Board of Supervisors*, 60 Fed. 55, 64. *City of Winter Haven* v. *Gillespie*, 84 F. (2d) 285, 287. *State* v. *City of Cedar Keys*, 122 Fla. 454, 462, 463. In the absence of a law authorizing the creation of a municipality *de jure* there can be none *de facto*. McQuillan, Municipal Corporations (2nd Ed.), § 175. *City of Guthrie* v. *Wylie*, 6 Okla. 61, 66. *Norton* v. *Shelby County*, 118 U. S. 425, 444. *Shapleigh* v. *San Angelo*, 167 U. S. 646, 655-656. *Tulare Irrigation District* v. *Shepard*, 185 U. S. 1, 13. *United States* v. *Royer*, 268 U. S. 394, 397. *Evenson* v. *Ellingson*, 67 Wis. 634, 646. *Duke* v. *Taylor*, 37 Fla. 64, 77. The town *de jure* could not be made to include the east side. *Mahood* v. *State, supra*. *Leatherman* v. *Alta Cliff Co., supra*. Mere inspection of the statute and the defined boundaries unmistakably shows that the west side electors were without authority to incorporate the east side tract with that in which they resided. Unquestionably, these were detached tracts within the meaning of the statute. The state supreme court having held that attempted incorporation of detached areas was unauthorized and void (*Town of Enterprise* v. *State, supra*) there existed no color of authority for the inclusion of the east side. The east side lands could not be brought within the taxing power of the town by the owners' acquiescence in its attempted exertion of jurisdiction over them and payment of taxes thereon that it in form laid

prior to the ouster decree. The town *de facto* could not derive from the consent of the east side owners jurisdiction that it *de jure* was without capacity to receive. The consent of owners of land located beyond permissible limits of the municipality cannot be made to serve as would a statutory grant of power. *Hayes* v. *Holly Springs,* 114 U. S. 120, 126-127. *Merrill* v. *Monticello,* 138 U. S. 673, 693-694. As the east side lands never became liable to be taxed by the town to pay its bonds, respondents were not entitled to restrain petitioners from defending against levy and collection of the taxes or to any relief in this suit. The decree of the Circuit Court of Appeals will be reversed and the case will be remanded to the district court with directions to dismiss the bill.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.